Case and Comment
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Diplomatic Claims and Their Presentation

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IN VIEW of numerous maritime offenses alleged to have been committed by the British, French, Germans, and Austrians, and in view of a great variety of injuries supposed to have been suffered by citizens of the United States in Mexico, I have thought it timely to say a few words about diplomatic claims such as may be expected to grow out of the alleged occurrences. Such claims, in one way or another, having occupied my attention throughout a long career as a Federal officer,—in defending against the French spoliation claims, in preparing opinions and letters of the attorneys general for the guidance of the Department of State, in arguing before the Spanish Treaty Claims Commission the cases growing out of the destruction of the battleship Maine, and latterly, in presenting claims to a foreign government as minister plenipotentiary,—I find some difficulty in selecting points to discuss which will interest those unfamiliar with the subject, to whom alone it is useful to offer random suggestions of the sort I have in mind.

Much loss to claimants has at times resulted from not attending to the difference between having a good basis for a diplomatic claim, and having a good basis for seeking redress in a foreign country. Fortunately, perhaps, our people have had little occasion to become versed in such things, and many, I venture to say, do not know the difference in status between consular and diplomatic offices. Our citizens, unjustly treated in a foreign country or on the high seas, sometimes quite wrongly assume that they can throw the burden of obtaining redress upon the American minister or even the nearest American consul; and one of the chief defenses maintained against the French spoliation claims in the court of claims was the failure to take appeals in the French courts from prize condemnations of an illegal character. Strictly, the captured should not only have appealed, not only have alleged error of law before the court of cassation, but afterwards have applied to the French government or sovereignty, before having a claim ripe for presentation diplomatically. In other

words, the sovereign is entitled to have an individual make use of all the means he has provided for ascertaining the law and the facts of the controversy, and then, if the courts are guilty of an illegal judgment, that is, one manifestly unjust and not merely erroneous, he has a right to have his attention called to this, in order that he may have a chance to consider the proceedings of his judicial subordinates, and require them to undo the wrong or himself do justice. If he will not, then the other sovereign may rightly insist diplomatically upon having indemnification for the wrong done to himself, in the person of his subject.

Too often, in the excitement of war time, individuals imagine that they are excused, as by the outrageousness of the belligerent's conduct, from pursuing the remedies offered by the foreign sovereignty, only to learn later that excitement and bias have misled them.

To illustrate: This mistake was not made by the Spanish Countess O'Reilly de Buena Vista, when the American governor general of Cuba by an order as such abolished her inherited monopoly of the Havana cattle slaughtering business. She very properly brought suit against him in the Federal court in New York for the alleged tort. Although he was personally sued, I was assigned by the attorney general to defend him, doubtless on the theory that ultimately the government would be called upon to reimburse the general, should he be required to pay the large sum demanded. For such reimbursement there were several precedents. As the case went to our distinguished Supreme Court, the countess caused no diplomatic claim to be presented, naturally concluding it would be useless to maintain that its decision was so manifestly unjust as to be "illegal" or a tort.

It is not my purpose to discuss in detail any of the claims that seem likely to be made against the European belligerents or Mexico; but it may be useful to call attention to the storehouse of legal lore to be found in the opinions of the court of claims in the French spoliation cases and in the briefs of the respective sides in those cases, on the subjects of visitation and search of vessels, flight, resistance, armed merchantmen, seizures, detentions, contraband absolute and conditional, blockades actual and pretended; and also useful to remark that one of the chief questions discussed and decided by the Spanish Treaty Claims Commission was whether Spain was liable for acts of insurgents in Cuba, such as the destruction of sugar mills and other property. A similar question to this last may well arise as to recent proceedings in Mexico, complicated by the difficulty of determining what, from time to time, was the government of Mexico and who were the insurgents. It is, however, to be hoped that diplomatic action will result in an understanding with Mexico which will simplify the settlement of claims.

Another fundamental mistake seems to be made, namely, the not regarding the law of nations as what its name implies, a law dealing with nations as such, and not with individuals as such, but with individuals as subjects, slaves, property of the sovereignty. By way of illustration, I venture to remark upon the general failure of our newspaper writers to see the point, when the German foreign minister alleged that the conduct of the British government had a bearing upon the question of the obligation to make visit and search. In other words, it seemed not to be understood that the foreign minister was contending, as a matter of law, that the British government could and did absolve British ships from the correlative duty of peaceful submission to visitation and search, and thereby, as a matter of law, absolved Germany from causing visitation and search to be made. It seemed rather to be supposed that this was an argument outside of the law and a mere excuse for violating it, the law being supposed to govern the individuals, and whether it was violated or not to be determined only by what occurred between those at sea in the particular case, regardless of alleged orders of the British government to its subjects about arming and ramming or fleeing from the German vessels. I do not, of course, mean to express any opinion as to the facts alleged by the foreign minister in support of his argument.

Since I wrote the foregoing, our Secretary of State, in his letter as to the

British seizure of our vessels, etc., has remarked that the American government cannot reasonably be expected "to advise its citizens to seek redress before tribunals which are, in its opinion, unauthorized by the unrestricted application of international law to grant reparation, nor to refrain from presenting their claims to the British government through diplomatic channels." I do not question the propriety of this as part of the British note, but certainly, if I had a private client, I should advise him, for greater caution, to pursue his remedies in the British courts, while taking advantage of any presentation the Secretary may see fit to make diplomatically. However it may seem to us *ex parte* that he would get no redress from the courts because governed by orders in council, instead of the law of nations, an impartial tribunal sitting hereafter may take a different view of the matter. The same ground of exception was urged on behalf of the French spoliation claimants, but the court of claims decided the point against them. Before an impartial tribunal it may even be held, however improbable this may seem, that the whole or important parts of the orders in council repeat what the law of nations declares.

Also, since writing the first part of this paper, the newspapers have announced that Señor Carranza, "the constitutional chief" in Mexico, has notified foreign nations that the claims of their nationals "for damages or redress of any kind for alleged wrongs must be initiated through the governors of the states," adding that "in the peaceful days of Mexico this was the procedure."

This, of course, does not mean the diplomatic claims, but the preliminaries or preventives already discussed.

The duty of the diplomat with regard to international claims is ordinarily simplified when they are numerous and of a class. Instead of settling each by persistent and annoying visits to the foreign office abroad, the presentation of very needful "aides memoires," notarial protests and affidavits, and indulging in the high-flown style which is the fashion among diplomats, his task is usually to urge the appointment of a commission of arbitration. This plan has many advantages. And sometimes, as in the case of our treaty with Spain, our government takes over the obligation to pay the claimants as one of the considerations of the bargain. It is usually very difficult to persuade the foreign minister to settle a particular large claim by the other method. The most far-fetched and whimsical reasons are solemnly advanced, at times, and politeness and policy in some cases require these to be as solemnly received. It is not difficult to perceive, usually, that there is no intention of paying as a matter of justice and right. The only thing to do is to advance other reasons than the merits of the claim; some extrinsic or collateral reason, as for example, the importance of pleasing one's government, a profitable exchange of benefits, or the like, and, in the case of weak nations or timid foreign ministers, a veiled or unveiled threat.

The method pursued by the Russian and British ministers when the Persian foreign minister hesitated to pay an instalment of his promised annuity to the exiled Shah was this: They sent servants to the foreign minister to demand the money, with orders to stay outside his door until the money should be received, as after two or three days it was. The hesitation was entirely justified, as later appeared; for it was based upon information that the old Shah was plotting to recover his throne, in violation of the agreement on which his demand was founded. Not many months later he actually invaded Persia for the purpose of re-establishing himself in power.

Another method with which I became acquainted in Persia was to deduct the amount of the claims from a loan made to the foreign government by the government of the claimants.

It is not impossible that claims against our own government may follow the great war. For example, it may be contended that we have omitted in some respects to perform our neutral duty, to the injury of foreign powers. Such a contention may be set up against claims we prefer, as a full defense or a set-off. It is well known that Austria reads the authorities on international law in such a way that she leans to those among them that favor the idea that the sending of

munitions of war in vast quantities, notoriously to be used by governments, instead of trafficked in as mere articles of commerce, is giving unlawful aid to the belligerent governments receiving them. She alleges that great plants have been established here since the war to supply certain foreign governments, and that we are manifestly and vastly aiding those governments to kill their enemies. So it may be contended that our government should prevent the great and notorious transactions in horses shipped from Newport News, and other ports, in view of the manner in which this business is being conducted on behalf of the *entente* allies. It may even be contended that the fact that, from geographical circumstances, and not as a result of success of one side in the warfare, we are unable to ship arms to both sides ought to preclude us from shipping to either, in order to be truly neutral.

I think it well to quote here some remarks from Mr. Knox's opinion (24 Ops. Atty. Gen. 19), or rather letter to the Secretary of State, concerning the shipments of thousands of mules from New Orleans to aid the British against the Boers:

"Each new case that arises seems to present new difficulties, and because it is new the nation interested in carrying on commerce argues from that part of international law which is based upon express treaties and distinct precedents, and affirms that it cannot be shown by the actual practice of nations and by treaties that all nations have recognized that such a transaction as is in question is prohibited by the common consent of nations. The other interested nation, on the other hand, usually dwells upon that part of the law of nations which has been developed by famous text writers into a system of principles, and argues that general principles are violated by the transaction. One nation brings forward all that can be shown in favor of the freedom of commerce; the other, all that can be shown in favor of belligerent right and neutral duty. But in international law, as in municipal, cases must be decided for which no exact precedents can be found. It is impossible to do nothing. Where there is nothing else to determine whether a thing belongs to one class or another, as whether it belongs to state or interstate commerce, or whether it is an ore of lead or an ore of silver, and it must be classed one way or the other to accomplish justice, it is a familiar principle to permit the preponderant characteristics to control. This principle seems to have been recognized in international law." Citing among other things the refusal of General Grant, during the Franco-Prussian War, to permit a sale of guns to be consummated by the Federal authorities, where it appeared that France was the purchaser; Hal's Int. Law, 628, 629; Bluntschli, § 805; 3 Wharton's International Law Dig. §§ 369, 370, 398; Calvo, 2749. Mr. Knox's letter concludes: "I have endeavored, as well as I could in advance, to indicate the law to be applied to them (the facts), and shall only add that, among the points by which to be guided, are the systematic character of the transactions, their greater or less extensiveness, their persistence in time or the reverse, their governmental character or the absence of it, their objects and results. And principally, of course, their relations, if any, with the prosecution of the military operations in South Africa."

It is quite within the range of possibilities that, notwithstanding certain concessions grudgingly made, questions will be revived concerning the law to be applied to the new facts introduced by submarine activity, when reasons of policy no longer stop the mouths of Germany and Austria. And the British seem to be already preparing to justify their extraordinary blockade and contraband orders in council. Both Germans and British seek to rely upon the effect of new facts, although likewise upon the argument that we have done the like things ourselves. *Ex facto jus oritur* is being stretched to suit their purposes, and also the *tu quoque* argument. All very well; but neither our actions during the Civil War, nor even decisions of our Supreme Court concerning these, may control the determinations of an impartial international tribunal, which our Supreme Court, of course, is not.

It is sincerely to be hoped that, as a result of the reaction to follow this war

madness, an international tribunal will be established at The Hague or elsewhere, capable of administering international justice, at least in matters of claims to indemnity on behalf of individuals. To compel a nation to pay such moneys when justly owing could hardly damage its dignity as an independent state more than the customary failure to pay. Nor is it clear to me that the law recently applied to West Virginia in the case of its indebtedness should not be extended to all nations. West Virginia is a state, and yet our great tribunal has found itself warranted in directing it to pay a portion of the so-called Virginia debt.

It is a common error to imagine that things must and will remain as they are until all the world can see plainly that they ought to be changed. It is equally common for everyone to accept the most radical change as a matter of course, when someone forces its arrival. Let us only get it into our heads that there is no more reason why nations should be permitted to hit each other whenever they see fit than why individuals should be so permitted, and we shall begin to wonder how it has taken the world so much longer to apply police regulations to the nations than to individuals. We have quite forgotten the time when individuals were allowed to settle every little difference of opinion by beating out each other's brains.

Charles W. Russell.

Photograph, Underwood & Underwood, N. Y.

EX-AMBASSADOR MYRON HERRICK AT HIS OFFICE AT THE EMBASSY IN PARIS.
The Embassy was formerly the home of the Marquis de Canay.

The Legal Status of Consuls

BY FRED H. PETERSON

Of the Seattle Bar

MANY articles have recently appeared in the press concerning the rights and responsibilities of consuls accredited to this country. Some have conveyed a fairly correct idea of the law and others were wholly misleading. The subject has attained to more than usual prominence by virtue of conditions that have aligned nations as neutrals or belligerents.

Criminal proceedings for conspiracy against a German consul stationed at Seattle were recently brought in the state court, but dismissed without a trial. As one of the counsel in this proceeding I had occasion to investigate this topic, and came to the conclusions herein stated. This subject raises the following questions:

1. To what extent is a consul subject to local law, civilly or criminally?

2. Which court has jurisdiction, state or Federal?

A foreign consul domiciled in the United States is subject to the local laws, civilly and criminally, except that under the treaties he may not be arrested in a civil action. Our Supreme Court announced the law in the Anne Prize Case (The Anne, 3 Wheat. 445, 4 L. ed. 431) by Judge Story:

> A consul, though a public agent, is supposed to be clothed with authority only for commercial purposes. . . . He is not considered as a minister or diplomatic agent of his sovereign, intrusted, by virtue of his office with authority to represent him in his negotiations with foreign states or to vindicate his prerogatives.

Judge Swayne said in Coppell v. Hall, 7 Wall. 542, 553, 19 L. ed. 244, on page 247:

> Consuls are approved and admitted by the local sovereign. If guilty of illegal or improper conduct, the *exequatur* which has been given may be revoked, and they may be punished, or sent out of the country, at the option of the offended government. In civil and criminal cases, they are subject to the local law in the same manner with other foreign residents owing a temporary allegiance to the state.

Consuls have a different status in Christian than in Mahometan countries, as may be seen from the opinion in Mahoney v. United States, 10 Wall. 62, 19 L. ed. 864, where the question of consular salaries was determined, that

> A great distinction has always been made between consuls to Mahometan and consuls to Christian countries, both in the powers intrusted to them, and in the duties with which they are charged. . . . In Christian countries consuls are little more than mere commercial agents; in Mahometan countries they are clothed with diplomatic and even with judicial powers. Consuls to Christian countries are often allowed to engage in business, but consuls to Mahometan countries are restricted to the duties of their offices, are paid a salary, and are prohibited from entering into commercial transactions.

Wilson & Tucker on International Law, p. 196, states:

> The extent of the powers [of consuls] varies, and is usually determined by treaty.

Since treaties with foreign nations are the supreme law, we must examine them to ascertain what the consular rights are. Usually there is included in a treaty this clause: "The contracting parties . . . do agree to grant to their envoys, ministers, and other public agents the same favors, immunities, and exemptions which those of the most favored nations do or shall enjoy." It becomes important to know if any treaty grants privileges more extensive than the particular treaty in question, by reason of prior or subsequent treaties with any other nation. Wilson & Tucker, Int. Law, 1216. As an instance take the treaty with Germany in relation to offenses:

It is provided in art. III. that "con-

sular officers, not being citizens of the country where they are accredited, shall enjoy, in the country of their residence, personal immunity from arrest or imprisonment, except in the case of crimes." The word "crimes" has been invariably construed to include felonies and misdemeanors. In Kentucky v. Dennison, 24 How. 66, 16 L. ed. 718, Tawney, Ch. J., said:

> The word "crime" of itself includes every offense from the highest to the lowest in the grade of offenses, and includes what are called misdemeanors as well as treason and felony.

It would therefore follow that a consul may be prosecuted criminally for any violation of law, and that his official position is no protection.

However, this peculiar situation arises under the German treaty. As it is given in the German language, a consul is not subject to criminal prosecution except for "verbrechen," which translated strictly would mean felony; the German word "vergehen" means misdemeanor; and "uebertretung," criminal trespass or petty offense. We have this curious result: The American version of the German treaty subjects a consul to prosecution for any crime, that is, felony or misdemeanor; while the German wording would confine criminal prosecutions of consuls to "verbrechen," that is, felonies only. There is but one treaty, yet by reason of the difference in meaning of the words used, or through inaccuracy of translation, the consul's exemptions would be much greater under the German version than under the same treaty as written in our language.

Would a German consul, resident here, be restricted to the rights of the American translation, or would he be entitled to claim the greater exemption guaranteed him under the same treaty, according to the German text? There appears to be no authority in point, but it would seem that a treaty would have to be construed according to its terms as adopted by the parties, in the language of the country where the offense is committed. Although a similar question was raised in United States v. Percheman, 7 Pet. 51, 8 L. ed. 605, where the treaties were in English and Spanish, both were declared to be originals, and that construction was adopted which made both agree. Of course, civil actions, without arrest, may be brought against any consul, as if he were a citizen and resident of the locality where sued. Ambassadors and Consuls, 2 C. J. § 29.

The second proposition relates to jurisdiction. By § 2, art. 3, U. S. Const. the judicial power is extended to "all cases affecting ambassadors, other public ministers, and consuls, . . . and "in all cases affecting ambassadors, other public ministers, and consuls . . . the Supreme Court shall have original jurisdiction." Accordingly, it has been held that all cases affecting consuls, whether civil or criminal, arising from Federal, state, or common law, are "cognizable under the authority of the United States," without an act of Congress. Re Iasigi, 79 Fed. 751.

Pursuant to the Constitution, the judiciary act of 1789 was passed, which provided that the Supreme Court should have "original, but not exclusive, jurisdiction" in suits affecting consuls; and the same act granted jurisdiction to the district courts, exclusive of state courts, of all crimes and offenses cognizable under the laws of the United States. Until 1875 it was settled law that the Federal courts had exclusive jurisdiction of all civil and criminal cases against consuls or vice consuls, and "the ordinary rule that the United States could not punish common law or state offenses, did not apply." United States v. Ortega, 6 L. ed. 523, and extended note.

The act of February 18, 1875, omitted § 9 of the judiciary act, which gave jurisdiction to Federal courts, exclusive of state courts, of all suits and proceedings against consuls. And so the question arose since 1875 up to the act of March 3, 1911, whether a civil action might be prosecuted against a consul in the state court. In Valarino v. Thompson, 7 N. Y. 576, it was held, after a trial in the lower court on the merits, that a consul had a right to raise the jurisdictional question for the first time on appeal, which was undoubtedly correct, in that consent could not confer jurisdiction.

Since the act of 1875, however, some courts have held that the state court had

jurisdiction, as in Wilcox v. Luco, 45 L.R.A. 579. Unless a foreign consul claimed his right to have the case heard by the Federal court, he waived the privilege, and a default judgment was affirmed. Judge McFarland wrote a dissenting opinion, which appears to present the better logic.

However, the act of March 3, 1911, § 256, distinctly provides thus:

> The jurisdiction vested in the courts of the United States in the cases and proceedings hereinafter mentioned, shall be exclusive of the courts of the several states: 1st. Of all crimes and offenses cognizable under the authority of the United States. . . . 8th. Of all suits and proceedings against ambassadors or other public ministers, or their domestics or domestic servants, or against consuls or vice consuls.

It has been held that the first subdivision cited embraces all crimes and offenses committed by consuls under a similar wording of the judiciary act of 1789, but it seems that the 8th subdivision of the present act is ample to embrace civil and criminal actions, for it has been adjudicated that the words, "suits and proceedings," include both civil and criminal cases. Thus, in Com. v. Moore, 143 Mass. 136, 58 Am. Rep. 128, 9 N. E. 25, it was decided that "the word 'suit' has in practice been construed as meaning criminal prosecutions as well as civil proceedings."

So, there is no doubt that the present Federal law, act of March 3, 1911, confers exclusive jurisdiction upon the United States courts of all civil and criminal actions, suits, and proceedings affecting consuls or vice consuls domiciled within this country.

These conclusions follow: First, that consuls and vice consuls are subject to all laws, civil and criminal, in the locality to which they are accredited, unless otherwise provided by treaty. In the case of a German consul, he is granted "personal immunity from arrest or imprisonment except in the case of crimes," which means that a consul may be prosecuted for all criminal violations of the law of his domicil, but may not be arrested in a civil action or proceeding.

Second, that the Federal courts have exclusive jurisdiction of all actions, suits, and proceedings, civil and criminal, against consuls and vice consuls.

Fred H. Peterson

Rise of Diplomacy and International Law

In the middle ages began the custom of sending permanent diplomatic agents to the courts of those nations with which the state had dealings; through these much information was secured of great use to the respective states, and disputes settled without war. Then began consular systems, whereby each state sends business agents to the chief business centers of other states, usually seaports, and through these secures information of great value for commercial interests. These agents also transact important details of administrative business for travelers and traders. . . .

In western civilization the customs arising from this international intercourse did not attain an important stage until the sixteenth century, when the development of national states and greater intercourse through the development of commerce brought them into prominence. Grotius in his work, "De jure belli et pacis" (first published, 1625) "first systematized these customs by commenting on them and supplementing them from principles of Roman and natural law. Since his day many learned treatises on these customs and principles have been set forth, resulting in a fairly well-defined code or set of rules and regulations for the guidance of nations in their intercourse one with the other.—Professor James Q. Dealey, in The Development of the State.

Pan-Americanism and the Pan-American Union

BY HON. JOHN BARRETT

Director General of the Pan-American Union, and formerly United States Minister to Argentina, Panama, and Colombia.

THE progress of Pan-Americanism is one of the most significant characteristics of the present day international relations of the United States. Everybody who is familiar with the foreign affairs of this country recognizes the remarkable growth of interest everywhere in the development of the Latin-American countries. "Pan-America" and "Pan-Americanism" are slogans of the hour, and this favorable change of attitude upon the part of the peoples of both North and South America is most gratifying to those men of both continents who have been working for years to promote not only Pan-American commerce, but Pan-American comity. In considering this subject, it is naturally interesting to trace some of the influences which have led up to this new era of better understanding and larger trade between the United States and its sister Republics. It is no exaggeration and no unjust praise to state that undoubtedly the most practical and powerful single agency in bringing about these conditions has been the Pan-American Union. That it may seem perfectly fitting, and not self-laudatory, for the Director General of the Pan-American Union to say this, he would emphasize that the credit for the great work of the Pan-American Union is due in a large measure to the wise guidance, constant support, and excellent advice which the executive officers have continually received from the members of the governing board, which is composed of the ambassadors and ministers of the Latin-American countries in Washington, and of the Secretary of State of the United States. Inasmuch the majority of men who form the constituency of CASE AND COMMENT are so very busy with their respective interests that they have not had time to familiarize themselves with the history, scope, and work of the Pan-American Union, it may seem appropriate to describe it in some detail. Told in a sentence, the Pan-American Union is the official international organization and office of the twenty-one American Republics—the United States and

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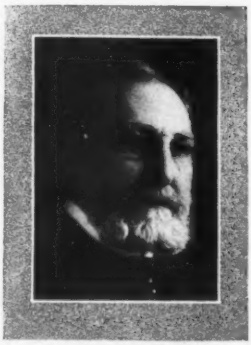
HON. JOHN BARRETT

its twenty sister Latin-American nations —maintained by their joint contributions based upon their population, controlled by a governing board made up of the diplomatic representatives in Washington of the Latin-American countries and the Secretary of State, administered by a director general and an assistant director chosen by this board, and devoted to the development of good understanding, trade exchange, close acquaintance, lasting friendship, and permanent peace among them all. The Pan-American Union was first organized in the summer of 1890, as the result of the action of the first Pan-American conference held in Washington in the winter of 1889–1890, and presided over by James G. Blaine, then Secretary of State. At that time and for many years it was known as the "Bureau of American Republics." Being created by the first conference, it was the subject of discussion and of enlargement in scope and work by the second conference held at Mexico in 1901–1902, the third conference held at Rio de Janeiro in 1906, and the fourth conference held at Buenos Aires in 1910. Beginning on a small scale, it has now grown into a position of power and usefulness where it can be described as the most comprehensive and practical international institution of the world,—at least it has been so described by eminent statesmen not only in the United States, but in Europe. As evidence of the way it is regarded in Europe, it can be cited that recently one of the most prominent English statesmen remarked that if there had been a Pan-European Union, fashioned upon the Pan-American Union at Washington, with its headquarters in London or Paris or Berlin or Vienna, there would never have been a European War.



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FRANCISCO J. YÁNES
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The activities of the Pan-American Union are conducted by a staff of experts in international trade, law, and relations of all kinds, assisted by a skilful staff of editors, translators, compilers, and librarians. It conducts an enormous correspondence with men in all parts of the world upon every phase of Pan-American affairs, and especially concerning the development and progress of the Latin-American countries. It endeavors to keep all the governments and peoples of the Latin-American countries fully informed in regard to what is going on in the United States of interest to them, and, in turn, to keep the government and people of the United States informed of corresponding conditions in Latin-America. It publishes a monthly illustrated bulletin in English, Spanish, Portuguese, and French, which has been described as one of the most interesting official publications in the world. The demand for it is far greater than the supply of copies. The Pan-American Union also publishes a large number of special reports bearing on each one of the American Republics, and it issues from time to time handbooks, pamphlets, maps, and press notices which are eagerly sought by all persons interested in Pan-American affairs. It distributed last year nearly 200,000 copies of its bulletin, and nearly 250,000 special reports and pamphlets, all of which were sent out in response to special requests.

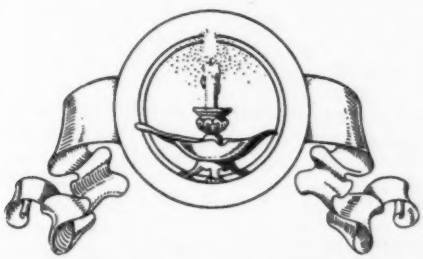
The Columbus Memorial Library, the official name of the library of the Pan-American Union, has probably the best collection of up-to-date Americana in the world. Upon its shelves are over 30,000 books and pamphlets, and these, in turn, are made accessible through 120,000 index cards. There is a collection of 16,000 photographs covering every country and section of Latin-America and a vast amount of other useful data which can be easily consulted.

The building occupied by the Pan-American Union, at the foot of Seventeenth street, only a short distance southwest of

the White House and at the entrance to Potomac Park, has been described by one of the great French architects as "combining, for its cost, beauty of architecture and usefulness of purpose, more than any other public building in the United States." This building, with its grounds, represents an investment of $1,100,000. Mr. Andrew Carnegie generously contributed $850,000 for the building and beautification of the grounds, while $250,000, contributed originally by the different governments of the Union, was used for the purchase of the ground and the architectural competition. Probably Mr. Carnegie never made any gift that has proved more useful and practical than this one. That it was appreciated by the American nations was evidenced by the fact that the great Pan-American Conference at Buenos Aires in 1910 presented him with a gold medal as a gift from all the American governments, describing him upon this medal as a "benefactor of humanity."

As evidence of the practical work that has been carried on by the Pan-American Union, it may be fitting to quote from an article of the Director General, which appeared in the September 1915 issue of the North American Review:

"The practical results actually accomplished for Pan-Americanism through the initiative of the Pan-American Union during the last eight and one-half years include the following: (a) The establishment of courses in Spanish (and in some instances in Portuguese also) and in Latin-American history, geography, and natural development, at over 2,000 universities, colleges, normal and high schools, academies, and private educational institutions throughout the United States, with corresponding help in the establishment of English courses among Latin-American colleges and schools; (b) the regular acceptance by 1,500 newspapers in the United States and 300 in Latin-America of descriptive matter and news bulletins relating to the progress of the American Republics; (c) the causing of over 3,000 libraries in the United States and many in Latin-America to equip their shelves with books relating to the Pan-American countries, based on lists carefully prepared by the Columbus Memorial Library of the Pan-American Union; (d) the supplying of data and information which has caused over 5,000 manufacturers, exporters, importers, bankers, and other business men to investigate or develop Pan-American business relations, and has resulted in an actual increase of $400,000,000 in Pan-American trade; (e) the providing of information which has aided over 6,000 North and South Americans to visit other American countries than their own; and (f) the purchase of property and the construction of a building for a fitting headquarters of the Pan-American Union as an international organization and home of practical Pan-Americanism."



The Diplomacy of the European War of 1914

BY ANDREW HUSSEY ALLEN

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[Ed. Note—Mr. Allen was in Europe from April to mid-November, 1914, and there began his study of the subject on which he has written.]

THE underlying cause of the war in Europe is the relentless antagonism between democratic and autocratic ideals, culminating in a confirmed and general distrust of Germany as the last stronghold of despotism—largely the result of the evolution of Teutonic policies for twenty years under the rule of William II. The contributory causes of the conflict are many. Chief among them, broadly viewed, are the Near Eastern Question, with its wars and readjustments; the Franco-German War, with its Prussian *vae victis;* the Russo-Japanese War; and the predatory instincts of the Hapsburg. But the Balkan wars of 1912 and 1913 must be regarded as the immediate cause of the struggle—the tragedy at Serajevo as merely the pretext.

When Bismarck was dismissed, in 1890, Germany was the dominant power in continental Europe. In 1911, we find Maximilian Harden, her foremost journalist, wailing in the *Zukunft: "Uns lebt kein Freund auf der weiten Erde."*

The German Emperor has frequently proclaimed himself the guardian of the peace of Europe. (F. Y. B., No. 6.) Nevertheless he brought Europe to the verge of war five times within the short period of eight years. His demand, in 1905, for the "open door" in Morocco precipitated a crisis which was resolved to his discomfiture at Algeciras. In 1908 his claim on account of the Casablanca affair produced a deadlock with France, and a most menacing situation. The question was referred to The Hague, where Germany was again baffled. In the same year he threatened to appear "in shining armour," to compel assent to Austria's violation of the treaty of Berlin by the annexation of Bosnia and Herzegovina; and Russia, unprepared, withdrew. In 1911 he sent a warship to Agadir, again intruding in French colonial affairs, and war was prevented only by England's declaration of her purpose to stand by France. In 1913, at the end of the first Balkan war, he supported Austria, which had mobilized an army of 900,000 troops to prohibit a Servian outlet on the Adriatic. While meddling in company with Austria in the Balkans he adventured independently in Turkey and Asia Minor, and thus justified the extension of Russian activities in the peninsula westward into Servia. From these movements arose the contest between Austria and Russia, for control in Servia, which led to the present conflagration.

The assassination of the heir to the Austrian throne, the Archduke Franz Ferdinand, and his morganatic wife, by a Bosnian Serb—an Austrian subject—at Serajevo, June 28, 1914, was followed by an ominous quiet, and absolute silence

Abbreviations: B. W. P., British White Paper; F. Y. B., French Yellow Book; R. O. B., Russian Orange Book; B. G. B., Belgian Gray Book; S. B. B., Servian Blue Book; G. W. B., German White Book; A. R. B., Austrian Red Book.

at the Foreign Office in Vienna for twenty-five days. The tragedy excited widespread sympathy in Europe, but the general European public had no adequate idea of the gravity of the situation. In England, France, and Russia internal affairs absorbed attention. Great Britain was at the point of civil war over the Home Rule act; France was distracted by the episodes of the Ribot Ministry, the Caillaux trial, and the War Minister's announcement of the army's unpreparedness; while Saint Petersburg was on the eve of a general strike. Such conditions must have made a strong appeal to the military strategists of Berlin. The French President and his Foreign Minister were *en route* home from Russia; the German Emperor was cruising in the North Sea, and the Russian Ambassador to Austria was absent from his post on leave,—when, without a whisper of warning, the Austrian ultimatum, with a forty-eight hours, time limit, was presented at Belgrade, July 23. The British Foreign Secretary said that "he had never before seen one State address to another independent State a document of so formidable a character." (B. W. P., No. 5.) The note contained ten demands on Servia, accompanied by many accusations and charges without a particle of proof. (B. W. P., No. 4.) Three of them, which Servia offered to submit to The Hague Tribunal, invaded Servian sovereignty to such a degree that, in the opinion of the Powers, their acceptance was incompatible with the preservation of independence. They remained unmodified. Great Britain, France, Russia, and Italy promptly intervened to secure an extension of the time limit, which was somewhat curtly refused by Austria. Influences were then brought to bear by Great Britain, France, and Russia upon Servia, to answer Austria in a conciliatory spirit. Servia did so. (B. W. P., No. 39.) The Austrian Government denounced the Servian reply as unsatisfactory (A. R. B., No. 34) with quibbling comments characterized by the Italian Foreign Minister as "quite childish." (B. W. P., No. 64.) The Austro-Hungarian Minister left Belgrade July 25, and a state of war ensued between Austria and Servia which was formally declared by Austria July 28, after a refusal, supported by Germany, to accept any suggestion of the Powers for a basis of discussion. It thus became evident that the Austrian ultimatum had meant war, Austria being reckless of the consequences that might be involved. (B. W. P., No. 46.)

On July 25, the Russian Government made a formal announcement of the anxiety with which they regarded the position of affairs, and added a warning that Russia could not "remain indifferent." (R. O. B., No. 10.) On the same day the Austrian Foreign Minister wrote to the Austrian Ambassador at Saint Petersburg: "We were of course aware, when we decided to take serious measures against Servia, of the possibility that the Servian dispute might develop into a collision with Russia," etc. (A. R. B., No. 26.) In the introduction to the German White Book we find: "We therefore permitted Austria a completely free hand in her action towards Servia," —and much more to the same effect, as well as these words: "We were perfectly aware that a possible warlike attitude of Austria-Hungary against Servia might bring Russia upon the field, and that it might therefore involve us in a war in accordance with our duty as allies." (G. W. B., Introduction.) And in a confidential despatch to the Governments of Germany the Imperial Chancellor advised them, "If Russia believes that it must champion the cause of Servia in this matter, it certainly has the right to do so." (G. W. B., Ex. 2.) On July 29, Russia announced (began) a partial mobilization against Austria in consequence of Austria's declaration of war against Servia: and at once Great Britain, France, and Italy concentrated their efforts upon mediatory measures between Austria and Russia. The burden of these negotiations devolved upon the shoulders of the British Foreign Minister, Sir Edward Grey. He led a forlorn hope, resourcefully and brilliantly. The aid of Germany for the preservation of the peace of Europe was invoked, and a mediation by Great Britain, Germany, France, and Italy was proposed. To this Germany demurred as being in effect an arbitration, and to an arbitration she must re-

fuse to ask her ally, Austria, to submit. (B. W. P., No. 43.) The suggestion was then made that Germany propose some form of mediation acceptable to Austria and herself. (B. W. P., No. 84.) On this suggestion Germany never acted. Assertions in the German White Book that Germany exercised any restraining persuasion upon Austria, or made any effort in the direction of mediation, are unreliable in the absence of proof of the statements, for nothing appears to support any of them either in the German or the Austrian correspondence, beyond the 'passing on' of a suggestion of Sir Edward Grey's from Berlin to Vienna.

Later in the day on July 29, Russia engaged to stop her mobilization, if Austria would eliminate from her ultimatum to Servia the points violative of Servia's sovereignty. The proposition was rejected. The same day the German Chancellor, becoming alarmed, asked Great Britain whether she would remain neutral if Germany pledged herself to abstain from territorial annexation in France (excepting the French colonies) and to respect the integrity of Belgium. This insulting overture was sharply repelled. (B. W. P., No. 85; No. 101.) About the same time, the German Ambassador at Paris, Baron Von Schoen, endeavored to induce France to join Germany in pressure on Russia to withdraw. (F. Y. B., No. 85.) To this sophism an answer was made, "that the Saint Petersburg Cabinet have from the beginning given the greatest proofs of their moderation." (Ibid.) Indeed throughout the negotiations Russian diplomacy was a model of candor and restraint. On July 31 Russia engaged to maintain a "waiting attitude," if Austria would arrest her advance in Servia and submit her ultimatum to an examination by the Powers. "The Austrian Ambassador at Saint Petersburg declared the readiness of his Government to discuss the substance of the Austrian ultimatum to Servia;" and the Russian Foreign Minister suggested London as the place for the discussion. (B. W. P., No. 133.) Here, at last, was a ray of light. (F. Y. B., No. 120.) But at this point the German Emperor, apparently waiting impatiently for his chance to strike, and fearing the defeat of his purpose, interfered and sent an offensive ultimatum to Russia, requiring the arrest of mobilization, which he followed with one, equally offensive, to France, asking her purpose as Russia's ally. To neither of these messages was a satisfactory answer returned, and on August 1 Germany declared war on Russia. At dawn on August 2 the German army began its advance towards France through Luxemburg; on August 3 an ultimatum was presented to Belgium, demanding a right of way for Germany's troops (B. G. B., No. 24), and on the same day Germany declared war on France.

Meanwhile, on August 2, Sir E. Grey had advised the French Ambassador that, if the German navy should come into the English Channel to attack the French coasts or shipping the British fleet would give all the protection in its power. (B. W. P., No. 148.) And earlier—on July 31—he had asked Germany and France whether, in the event of war, they would respect the neutrality of Belgium. France answered, "Yes;" but Germany declined to answer. On August 4 the Belgian King appealed to the King of England for diplomatic intervention to safeguard the integrity of Belgium. On the same date the British Ambassador at Berlin again asked the German Foreign Secretary if Germany would refrain from violating Belgian neutrality. The answer was, " 'No,' as in consequence of the German troops having crossed the frontier that morning Belgian neutrality had been already violated." (B. W. P., No. 160.) Thereupon England declared war on Germany. It must be remembered that in 1831 England secured the neutralization of Belgium to prevent the occupation of that coast on the English Channel, by any of the Great Continental Powers, as a menace to the safety of the British Islands.

The Italian attitude had been defined on August 1, on Germany's inquiry as to Italy's purpose, as follows: "The war undertaken by Austria, and the consequences which might result, had, in the words of the German Ambassador himself, an aggressive object. Both were therefore in conflict with the purely defensive character of the Triple Alliance,

and in such circumstances Italy would remain neutral." (B. W. P., No. 152.) The same position had been assumed by Italy in 1913, on Austria's mobilization.

The record discloses that in Germany alone of the belligerent Powers, "mobilization means war,"—that is to say, German mobilization. (G. W. B., Introduction, and Ex. 25.)

Germany's attempt, through "documents discovered in Brussels," to fasten bad faith upon the Belgian Government, is a climax of absurdity, which defeats itself. It was exposed by the Belgian Minister in Washington in the New York Times of December 22, 1914.

On August 4, 1914, the United States Government issued a proclamation of impartial neutrality. Later the Administration suspended, for thirty days after departure, the publication of the manifests of ships clearing from our ports. This unneutral measure may have been in resentment of the hovering of British warships off our coast. Its immediate effects, however, were to assist contraband trade with Germany, and to lay the foundation for the irritating and ultralegal orders in council by the British Government.

After the burning of Louvain and other barbarous deeds, Belgian Commissioners visited the United States to present to the President evidence of the atrocities committed by the ferocious violators of their country. They were coldly received and coldly dismissed, in sequence of the Administration's avoidance of our engagement signed at The Hague, and ratified without reservation, to protest at the German invasion of Belgium, which was described by the German Chancellor himself as a "breach of international law" (Speech in the Reichstag, August 4, 1914),—to say nothing of other specific treaty breaches. In the second Lusitania note the President says (June 9): "The government of the United States is contending for something much greater than mere rights of property or privileges of commerce. It is contending for nothing less high and sacred than the rights of humanity." (There is an apparent limitation here, unexpressed. We should read "American humanity.") But the new Secretary of State, coming later into the arena, "unhesitatingly assumes," without conventional requirement, "this task of championing the integrity of neutral rights." The note is to Great Britain, and there is, therefore, no question of murder; but a question only of "mere rights of property or privileges of commerce." (October 21, 1915.)

The British Government has so increased the list of contraband as to interfere considerably with neutral trade, having finally included cotton. The position of our government on the situation in contraband has not—at this writing—been made known. The United States Government has refused to recognize the British blockade, and has denied the validity of the judgments of British prize courts restricted by municipal law. The blockade, while effective on the Atlantic, has not, until lately, been very capable against Scandinavian commerce. The most significant fact in the commercial status between this country and Europe is the almost invariable development of American ownership of cargoes afloat. We seem to be buying for cash and selling on credit,—a fruitful source of suspicion in the circumstances. There is a sharp contrast in the published American correspondence between the suavity and patience of notes to Germany and the stiffness and even acrimony in those to Great Britain. The last note to England (October 21), is extremely technical and acutely contentious on methods, and on mooted points of international law; and seems to indicate a prospect of dangerous tension. It leaves a disagreeable impression on the reader's mind, as being captious and "ungenerous."

The "friendship" between the United States and Germany is a perfunctory diplomatic relation. The two countries are not at war with each other. They never have been. But we are a democracy and Germany is a despotism,—a military oligarchy, ruthless and footloose. The spirits of the two nations are mutually and mortally hostile. We have had since the beginning of the war many proofs of German enmity.

The guidance of the correspondence with Germany respecting the torpedoing of the Lusitania was undertaken by Mr.

Wilson, personally. The three notes written by him present a strange medley of indignant protest and over-anxious deprecation. In the course of the letter-writing the German Government, compelled by the destruction or capture of its submarines in waters about Great Britain to abandon that area, promised as a 'concession' to the United States to desist, under specified conditions, from the continued sinking of passenger ships without signal. This result was hailed by supporters of the Administration, irrespective of party ties, as "a great diplomatic triumph." Whereupon the Arabic was torpedoed. The act was disavowed by Germany, and another "brilliant diplomatic victory" was celebrated. The Lusitania was destroyed and hundreds of innocent and inoffensive men, women, and children wantonly murdered, more than six months ago. The case remains unsettled,—the crime without prospect of atonement. The complacency of Mr. Wilson's administration has shocked and revolted the world, as the assassination itself appalled it.

The Austrian Government protested against the sale of arms and munitions of war to the Entente Powers by Americans. The protest, which was silly, was disposed of by a note from the American Secretary of State. Very soon after this exchange of views, the Austrian Ambassador was recalled at the request of our Government, having been charged with a conspiracy against the peace and security of the country's industries. Such is the latest chapter of American diplomacy.

But there is a postscript—the Thanksgiving proclamation—wherein we are asked to bless Heaven for that diplomatic victory which leaves us in a position of acquiescence in Germany's claim to the right to murder Americans, at so much a head. Remonstrance is met by the new prophets with the shout of "Jingoism!"

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HON. JAMES W. GERARD AT HIS DESK IN THE AMERICAN EMBASSY AT BERLIN.

Immunities of Diplomatic Agents

BY EDWIN MAXEY

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AMONG international courtesies, the one which stands out most prominently is the immunity from local jurisdiction, conceded to diplomatic agents. This immunity is sometimes referred to as extraterritorial sovereignty. But by whatever name we call it, the substance is the same. It is a privilege granted by the host in order that the guest may not be hampered in performing such duties to his sovereign as may be legitimately performed by a diplomatic agent.

In accordance with this rule of international comity, diplomatic representatives are exempt from arrest by the local police, although temporary restraint of their liberties might be resorted to as a means of self-preservation. Neither by express nor implied agreement does any nation surrender the right of self-defense. But with this qualification, their liberty may not be interfered with by the local police, either with or without an order from the court. This immunity extends, of course, to civil as well as to criminal matters, so that a diplomatic agent may not be compelled to answer civil process, whether as defendant, or as witness in the case of another.

The basis upon which this rule rests is the presumption that the time of a diplomatic agent is so necessary to a proper representation of the interests of his sovereign that none of it should be diverted to matters of a less urgent and less important nature. As a rule, the men who have standing enough to warrant their selection as diplomatic representatives of their country have sense enough and honor enough so that the immunities granted them occasion no embarrassment to the local authorities. Few diplomatic agents are so lacking in the fundamental requisites of a gentleman that they will abuse the hospitality of a friendly state.

Such being the immunities of diplomatic agents, and such being their obligation not to abuse their hospitality, let us examine the Dumba case. Constantin Theodor Dumba was Austrian Ambassador to the United States. As such, it was his official duty to represent the legitimate interests of Austria in the United States. But he conceived the idea, more or less brilliant, that in addition to said task he had time enough at his disposal to disorganize and hold up for months, if not entirely prevent, the manufacture of munitions in Bethlehem and the Middle West. This idea he transmitted, or rather attempted to transmit, to his home government through Mr. Archibald, an American newspaper representative; and transmitted to his fellow citizens in this country the threat that, under penalty of treason, they must cease working in plants manufacturing munitions for sale to the Allies.

We have here a fourfold offense: (1) A conspiracy with an American citizen to do an unlawful act; (2) an offense against the government of the United States by attempting to make use of its passports to perform a service which would be unneutral; (3) an attempt to exercise sovereign powers within the United States; (4) an attempt to interfere with and regulate our industrial operations.

Whether or not Mr. Archibald was ignorant of the character of the messages intrusted to him for transmission to the Austrian government, matters not. Dr. Dumba knew their character, and knew that he was asking Mr. Archibald to perform an unlawful act.

He knew, further, that he was asking an American citizen to perform an act for which, if caught *in delicto*, he would be subjected to great inconvenience and perhaps punishment.

Assuming that Mr. Archibald was not an innocent agent, as in all probability he was not, there is no escaping the conclusion that a criminal conspiracy was formed between the two. Such corrupting of American citizens should be below the dignity of any diplomat enjoying the hospitality of the United States. When embassies become the breeding place for criminal conspiracies, a change in ambassadors becomes imperative. Better no ambassador at all than one who puts law and honor at defiance.

Unquestionably, Dr. Dumba intended that the American passport carried by Mr. Archibald should be used as a means of deceiving the government at war with his own, but friendly to the United States. The success of the scheme depended upon such deception. If this were done with the consent of the United States, it would be an undoubted violation of neutrality. Dr. Dumba was therefore putting the United States in a position where it must either prove its innocence, or stand convicted of a breach of neutrality. No guest having a gentleman's sense of honor will so compromise his host. Dr. Dumba knew full well that the American government would issue no passport for the purpose of getting messages unlawfully through the lines of states friendly to the United States. He therefore did not ask for it, but attempted to make such use of one which he knew was issued for a different purpose. Such conduct becomes intolerable when resorted to by men occupying positions of trust and honor.

The attempt to exercise acts of sovereignty in the United States, in defiance of our laws, is the same offense for which Mr. Genet was dismissed over a century ago. The United States, like Serbia, is unwilling to have Austria exercise sovereign rights within her dominion. Neither would an ultimatum, with a forty-eight-hour limit, change the American mind on this point. If Austrian citizens wish to remain in the United States, they must remain subject to American, not Austrian, law. There is no room for them on any other condition. If Austria is not satisfied to have them remain on this condition, she must take them home. While they choose to remain, it must be the United States, and not Austria, who shall say whether or not they are acting legally.

The attempt of Dr. Dumba to regulate our industrial operations was unwarranted and arrogant. It might readily have occurred to him that if the United States really needed someone to superintend its industries, it would prefer to make its own selection, and would very probably select someone who could give his whole time to the task, rather than intrust it to someone whose attention would in a large measure be distracted by the necessity of having to conduct diplomatic correspondence, through ordinary and extraordinary channels, with his home government. Self-appointed guardians frequently lack many of the qualifications necessary to promoting the welfare of the ward.

If Austria felt aggrieved over the manufacture of munitions in the United States, she had a perfect right to protest in the legally recognized way for one government to make its protests known to another. She did. Thus far all was regular and free from criticism. But after the United States assured Austria that, according to our interpretation of international law, the United States was violating no obligation in permitting the manufacture and sale of munitions of war to the Allies, it was then the duty of Austria either to continue the legal argument, sever diplomatic relations as a further protest, or else accept as final the reply of the United States. It did not become Austria, or her diplomatic representatives, to set at defiance the reply of the United States, and proceed to accomplish by illegal means what they could not accomplish legally.

The conduct of Dr. Dumba left to the government of the United States simply a choice between requesting his recall, and at once dismissing him. It chose the less harsh of the two methods of disposing of him. This put it up to the Austrian government either to recall him or say that it saw in his conduct nothing

which warranted a recall. It was hardly probable that it would take the latter course. For, even though it had instructed him to so act, after he had committed the blunder of getting caught, his government would no doubt make a scapegoat out of him, rather than assume the responsibility for having advised a line of conduct so absolutely indefensible.

Should the Austrian government by any chance have refused to recall Dr. Dumba, whether because he was following instructions, or for any other reason, the government of the United States must then have dismissed him. Had this method of disposing of one who had become *persona non grata* been resorted to, President Wilson need have had no misgivings as to whether or not public opinion in the United States would sanction such a course. And this would be true, even though it were known that Austria would sever diplomatic relations as a result of it. While the American people have a sincere desire to remain on friendly terms with Austria, as with all other nations, they are not willing to do so on the condition of surrendering their dignity and self-respect.

If Dr. Dumba acted on his own initiative, his government should not have hesitated to recall him and dismiss him from his diplomatic service, as a fitting rebuke for smirching its reputation by committing unlawful and indefensible acts in its name. For it must be remembered that a nation's good name may suffer quite as much from using dum-dum diplomats as from using dum-dum bullets. No diplomat has reason to presume that his government expects him to act unlawfully, or that, when he has so acted without orders, it will come to his rescue and accept responsibility for his unauthorized, unlawful acts.

Evidences that the Austrian government gave a half-way approval to the acts of Dr. Dumba were not entirely wanting. One was in their slowness to act, another in their suggestion, that President Wilson should have suggested that he be given a leave of absence, instead of being recalled; and it is reported unofficially that Emperor Franz Joseph did not consider the reasons assigned by the American government as being sufficient to warrant his recall.

It is difficult to see what the Austrian government hoped to gain by delay. Dr. Dumba's usefulness as a representative was at an end.

There is a very near approach to inconsistency in the alleged contention of Emperor Franz Joseph, that the reasons assigned by the American government were insufficient. He refused to accept Mr. Keiley, appointed by President Cleveland in 1885, as diplomatic representative of the United States at Vienna, because Mr. Keiley's wife was a Jewess, and their marriage ceremony was solemnized by the civil, rather than the ecclesiastical, authorities. Though these objections seemed flimsy to the United States, it did not insist upon Mr. Keiley's being received. There can be no question as to the relative strength of the objections then against Mr. Keiley, and now against Dr. Dumba. To the normal mind, matters of substance involving fundamental principles of legal and moral obligation appeal with much greater force than mere matters of taste and ceremony.

To have resorted to the subterfuge of asking that Dr. Dumba be granted a leave of absence would have been to minimize the character of his offense. The United States was under no obligation, either to the Austrian government or to Dr. Dumba, to go out of its way to make black appear white. The surest way to discourage wrongdoing is by rebuking the wrongdoer, rather than by resorting to subterfuges to make it appear that no wrong has been done.

This is not the first instance in which the United States has been compelled to request the recall of diplomatic representatives of other countries at Washington. It requested the recall of Mr. Yrujo, the Spanish minister, in 1803, for attempting to bribe a Philadelphia newspaper. In 1809 it demanded the recall of Mr. Jackson, the British minister, for reflections on the Secretary of State, and for making offensive toasts at public dinners. In 1871 it demanded the recall of Mr. Cotacazy, the Russian Minister, for abusive remarks about President Grant. In 1888 it requested the recall of Lord

Sackville-West, the British Minister, for interfering in local politics; and, as there was a delay in recalling him, he was dismissed. In 1898 the recall of Mr. Du Puy de Lome was demanded because of slighting remarks about President McKinley.

In none of the above cases were the reasons for recall stronger than in the present case. In none of them was the request withdrawn, and there was no probability that it would be in this case. Dr. Dumba's official relations with the United States had to end, either by his recall by his own government, or by dismissal by the government of the United States.

Edwin Maxey

Photo by Boston Photo News Co., Boston, Mass.

PARK OF AMERICAN EMBASSY AT VIENNA.

"Scraps of Paper" and China

BY DR. GILBERT REID

Of the International Institute of China

"The neutralization treaties, the arbitration treaties, The Hague Conferences, and some of the serious attempts at mediation, although none of them go far enough, and many of them have been rudely violated on occasion, illustrate a strong tendency in the civilized parts of the world to prevent international wars by means of agreements deliberately made in time of peace."—President Charles W. Eliot.

"The faith of treaties is the only solid foundation on which the temple of peace can be built up."—Viscount Bryce.

NO TWO names among Anglo-American people carry greater weight in the cause of universal peace which is grounded on righteousness. The sacredness of promises, contracts, agreements, treaties, made by governments is the only guaranty for the preservation of peace and national sovereignty in their resistance to methods of war. Any violation of sacred promises, however made, is a crime; it finds an excuse, not a reason, in "the necessity of war." The principle enunciated by these two distinguished scholars and statesmen deserves more than ever our whole-hearted acceptance.

These words of Ex-President Eliot and the Rt. Hon. Viscount Bryce apply to the situation in Europe. The guilty party is taken to be Germany. Great Britain, France, and Russia are supposed to be so innocent as to have the right to fix the guilt on the German government, if not on the German people. This is a question I leave to competent critics, except that I casually suggest that the case has been stated in more than one way.

I am now concerned in applying the principle to China and the Far East. I go back to events prior to the present war, as disclosing the harm already done to China, and the dangers which still lie in her path. I deal with principles, though governments are concerned in their maintenance or violation.

I see no hope for peace in China, or for her permanence as an independent nation, unless a sufficient number of foreign governments unequivocally declare their readiness to abide by the principle announced above. China is at the parting of the ways. China, to preserve her own, must squander the revenue of an overtaxed people on an army and navy, so as to be ready for war, or something must be done to restore her confidence in good words spoken or written, both sealed and unsealed, by governments with whom she deals. It is for China to adopt militarism, or for the other powers to adopt the almost axiomatic truth of these two aged veterans, who look out over the world and pray for the "kingdom wherein dwelleth righteousness."

I. First, then, the data on which to rest our argument.

1. In the Shimonoseki treaty of 1895, made by China with Japan, after China abandoned all claim to the suzerainty of Korea, appear these words in article I.:

"China recognizes definitely the full and complete independence and autonomy of Korea;" that is, China gave up her title to the suzerainty of Korea, but did not intend that Japan should take her place. She stipulated along with Japan the "independence and autonomy of Korea."

2. In the Treaty of Alliance of 1902, made between Great Britain and Japan, appear these words in article I.:

"The high contracting parties, having mutually recognized the independence of China and Korea, declare themselves to be entirely uninfluenced by any aggressive tendencies in either country."

3. In the protocol of 1904, made by Japan with Korea, appear these words in article III.:

"The imperial government of Japan

definitely guarantee the independence and territorial integrity of the Korean Empire."

4. In the Portsmouth treaty of 1905, made by Japan and Russia, appear these words in article IV.:

"Japan and Russia reciprocally engage not to obstruct any general measures common to all countries, which China may take for the development of the commerce and industry of Manchuria."

5. In the agreement of 1905 between the United Kingdom and Japan appear these words in the preamble:

"The governments of Great Britain and Japan have agreed upon the following articles, which have for their object, —the preservation of the common interest of all powers in China by insuring the independence and integrity of the Chinese Empire, and the principle of equal opportunities for the commerce of all nations in China."

6. In the arrangement between Japan and France of 1907 appear these words:

"The governments of Japan and France, being agreed to respect the independence and integrity of China, as well as the principle of equal treatment in that country for the commerce and subjects or citizens of all nations, etc., etc."

7. In the convention of 1907 between Japan and Russia appear these words in article II.:

"The two high contracting parties recognize the independence and the territorial integrity of the Empire of China and the principle of equal opportunity in whatever concerns the commerce and industry of all nations in that Empire."

Subsequently Japan and the United States exchanged notes, but made no treaty, expressing the same holy desires.

II. We now turn to an interpretation and elucidation of these pleasing words, solemnly signed and sealed by Japan, Great Britain, France, and Russia. Our own country is concerned as to principle. Japan is specially concerned with all seven of the arrangements, agreements, conventions, or treaties duly signed, ratified, and published to the world. We do not bother about any secret treaties; here we have food sufficient for thoughtful reflection.

1. The words we have quoted are clear,—they bespeak friendship to China. They contain no double meaning. There is nothing hazy. Taken at their face value they give no concern to China or to Korea, and in reason should create no suspicion. Fortunately for our intelligence, we need not surmise the future. We have history to work upon. We even have other than Americans to help us interpret what apparently is plain enough. The trouble is not in interpreting the meaning of the treaties, but in interpreting the meaning of facts and the lessons of history. The trouble comes not from pious political phraseology, but from the lamentable disregard of words which even a child must understand in only one way.

2. As a matter of history, Korea is now a part of the Empire of Japan, though Japan in treaties made with China, Great Britain, and Russia agreed to recognize and guarantee Korea's independence. Mr. J. O. P. Bland, a well-known Englishman personally concerned in getting for England various concessions, and no great friend of Germany, in his "Present Policies in China," from which I shall take most of my interpretative quotations, says:

> Japan will extend her empire westwards on the Asiatic continent at China's expense. As it was with Korea, so it must be with any desirable territories to the north and west of the Great Wall, which China cannot defend by force of arms.

Here, then, is advocated the necessity of recourse to arms, if national existence is to be preserved. This is the theory of Theodore Roosevelt, as against the remedy for threatened catastrophe proposed by Ex-President Eliot and Viscount Bryce. Japan's action in Korea, with no reproof from Great Britain and Russia, and only a silent protest from China, is a hard fact that knocks to pieces a beautiful theory. Is it at all likely that a change of heart has come over Japan, or an awakening to consciousness has come to Great Britain and Russia, so as to prevent a repetition of the fact taking place in China, or at least "to the north and west of the Great Wall," which has already taken place in Korea?

3. In Manchuria there is no longer equal opportunity for all nations, neither is China allowed to initiate or carry out schemes for self-development. Russia dominates in north Manchuria and Japan still more in south Manchuria. These are facts which scarcely agree with the stipulation of the Portsmouth treaty or the reference to the Empire of China in other compacts made by Japan with Great Britain, France, and Russia. Japan's refusal to submit to The Hague the dispute concerning the Antung-Mukden railway; Japan's opposition to the Fakumen railway scheme of the Chinchou-Aigun railway; and finally the combined opposition of Russia and Japan to Secretary Knox's "neutralization" scheme, all show that what is done in Manchuria is not with the good will of China, but by the will of Russia and Japan. Mr. J. O. P. Bland writes thus:

> The pledge given in the Portsmouth treaty by Russia and Japan alike, not to exploit their existing railways for strategic purposes, was deliberately repudiated, and an intimation was plainly conveyed to the Waiwupu that the joint protests against the Chinchou-Aigun scheme were based on considerations of political and strategical expediency. There were no treaty rights to support these protests,—those rights were all on the other side. British policy at this juncture might have saved the purposes of the 'open door' and international morality; but Downing street's loyalty to the Anglo-Japanese alliance, wherein lay clearly the line of least resistance, took the form of general acquiescence in Japan's proceedings, even though these were obviously detrimental to the fundamental objects for which the alliance was made.

Japan's conduct the last years shows where her heart is set.

4. It is most remarkable how Japan in conventions signed with Great Britain, France, and Russia reiterates the united purpose of insuring, respecting, or recognizing the independence and integrity of China. Taken at their face value, they should give comfort to China rather than inspire feelings of dread. However, for outside nations to formally agree to take on this task in China, by themselves, and without consulting China, the party concerned, is a form of paternalism which has not been altogether relished. Still, if the object has been carried out, there is no reason for China to complain. She should thank these four foreign governments for the help they have rendered. Mr. J. O. P. Bland says:

> There has never been anything sentimental in the foreign policy of Japan, and her statesmen have from the first displayed a thorough appreciation of the fact that treaties and conventions between the great powers may serve to conceal, but not to hinder, the processes of geographical gravitation and the ulterior purposes of statesmen.

Mr. Bland, in referring to the mission of Prince Katsura to Russia in 1912, quotes these words from a leader in the Pall Mal Gazette:

> The day may come when the principle which the Anglo-Japanese alliance was framed to uphold, namely, the maintenance of the territorial integrity of China, will have to be abandoned. Indeed, not the least of the contributors to this unhappy result may be the Chinese themselves. Even as matters now stand, neither Russia's recent action in Mongolia, nor British action in Tibet, nor Japan's special position in Manchuria, can be regarded as fully consonant with the upholding of that principle.

The United States government has likewise more than once exchanged notes with all the great powers, and also with China, concerning this very principle. The words used, latterly linked with the new phrase, "the peace of the Far East," have an unctious sound. Somehow or other, though the crack of doom has not come, the Chinese have been restive under the profuse declaration of "lasting friendship." Up to the present war, through a nice balance of power of the great powers, the territorial integrity of China proper was not endangered. Any "ulterior purposes of statesmen" were duly checkmated by rival purposes, also perhaps equally ulterior.

5. The other promise of the powers has looked to "the equal opportunities for the commerce of all nations." In many respects this is the most vital of all principles in international relations. Its fulfilment is as important as the observance of treaties and compacts. It assures peace, averts war, promotes brotherhood, and respects the territorial integrity of nations. To seek to eliminate even one power destroys its efficacy and creates confusion. For one power alone, or for four powers together, to

dominate trade, is a menace to peaceful diplomacy.

Mr. Bland, going back to the period immediately following the Boxer upheaval of 1900, refers thus to the action of the American government in adopting "England's policy of the 'open door:' "

> The State Department espoused it as warmly as any free traders could wish, and Mr. Secretary Hay addressed a circular note to the treaty powers, asking their adherence to the general principles of equal opportunities for trade and the integrity of Chinese territory. The powers responded with suitable expressions of their disinterested devotion to both principles, and the press of the world rejoyced over so conspicuous a triumph of benevolent diplomacy. The paper victory was manifest; the fact that Russia continued to tighten her grip on Manchuria, advancing the while her lines of attack to the Yangtsze, while Germany held fast to her exclusive sphere in Shantung, was tacitly ignored by common consent.

Coming down to the Sino-Japanese agreement in 1905, when "the avowed objects of the Anglo-Japanese alliance have ceased to be practical politics," Mr. Bland continues his interpretation of facts:

> From the moment when this agreement, with its unpublished 'supplementary clauses,' was signed, the policy adopted by Japan's diplomatic and financial agents was consistently directed along new lines of 'peaceful penetration,' under conditions which frequently involved direct conflict with the legitimate vested interests of Great Britain, violation of the principle of equal opportunities in Manchuria, and disregard of British rights in the Yangtsze valley provinces.

Finally, concerning the events of the year 1911, when Japan and Russia found a seat in the council chamber of the Sextuple Loan financiers, Mr. Bland adds these words:

> A very important section of the most influential opinion in Japan had come to the conclusion that the time had arrived to substitute for the principle of equal opportunities definite claims to recognition of Japanese priority of rights and superiority of position.

6. Briefly, the integrity and independence of China, and equal opportunity for the commerce and industry of all nations in China, are tasks committed to a combination of four powers,—Japan, the leader and initiator; Great Britain, Russia, and France. Our own country follows at a distance. Japan leads, though others know it not. The fact of such a combination is more significant than the objects they profess. The objects are wide and benevolent; but the combination betokens trouble and antagonism for China. For these four powers to agree among themselves to work together, even in the laudable effort of keeping open the door to the enterprise of all nations, in all parts of China, in fact suggests that all but these four powers will have a hard time in entering what may be called "the narrow gate" of commerce. For Japan to think of such a combine, and to carry it through, suggests that her ambition may be, not for equality, but for "priority" and "superiority."

As a matter of fact, this combine by keeping together in compact formation, would mean an overwhelming preponderance of influence to offset two strong commercial powers like America and Germany, even when working with the smaller commercial nations. As for America, she has eliminated herself from the loan group, but not from other enterprises. As for Germany, she more than once has allured Great Britain from full participation in the combined scheme, and also at times linked forces with America. In any case the presence of these two powers, working separately or in unison, has on the one side restrained the more powerful combine from too extreme measures or Japan from a universally recognized leadership, and on the other side has kept alive the two principles, so vital to China, of maintaining China's autonomy and respecting equal opportunity. To weaken these principles is to turn a sealed agreement into a scrap of paper, threatens peace, and necessitates measures of military defense. To crush German interests in China and to eliminate America from the combination all tends to China's peril.

This tendency of Japan and her three allies, only dimly disclosed the last decade, and more, has had a flood of light shed upon it, since the World War began.

Gilbert Reid

Diplomacy as a Profession

BY HARVEY D. JACOB

Of the District of Columbia Bar

THE eyes of the world turn toward Europe in the exertions of its components for self-preservation. Next in importance to physical struggles for supremacy of the respective fighting forces we look to the matching of wits and intelligence of foreign representatives of the contesting and neutral governments, each pitted against the other in an endeavor to justify the present conflict as well as to prevent its extension to at-present noncombatants.

The American public has been so vitally concerned with the development of its vast resources that little opportunity has presented itself for an understanding of the purpose and usefulness of our foreign representatives. Of this service, therefore, we speak, considering especially whether the field of diplomacy offers advantages to the legally trained man, and, conversely, whether a man skilled in the law is of extraordinary worth in this important work.

In most European countries the diplomatic field is one to be entered and followed as a life profession. Special preparation is prerequisite to a connection with the service, but, once entered, advancement, generally speaking, is by reason of length of service and efficiency. Our American system, however, is different. Until recently all the higher places in the diplomatic and consular fields were filled by the President, by and with the consent of the Senate, more as political reward than for special ability or merit. For many years considerable effort for competitive examinations and permanent tenure of office was made, and as early as 1868 a committee of the Senate selected to investigate the subject severely criticized the then existing condition by reporting that—

"The want of our foreign service is special knowledge and experience on the part of those who enter it as officials. Under our present system, consular and diplomatic agents are selected without regard to their qualifications. As a rule, those appointments are bestowed as a reward or inducement to political service rather than to secure, in the interests of trade and diplomacy, the best ability which the country affords. Not one tenth of the whole number of appointees are conversant with the language, geography, or material resources of the countries to which they are accredited. . . . The tenure of office, too, is so brief and uncertain that there can be but little *esprit de corps* in the service."

In his "Practice of Diplomacy" former Secretary of State Foster well illustrated the existent condition by saying that—

"An anecdote is told of Secretary Seward that, to a citizen who was remonstrating with him against continuing in the service a minister who was disgracing his country, and wondering how such an appointment culd be made, he replied: 'Sir, some persons are sent abroad because they are needed abroad, and some are sent because they are not wanted at home.'"

The Senate Committee further reported—"The effort necessary to acquire professional excellence, or to complete difficult and protracted public service, will rarely be made without stronger motives. Continuance is necessary to usefulness in office under our present system of appointments. No man can pass from other pursuits directly into the higher grades of diplomatic and consular service, and comprehend clearly the nature and scope of his duties."

Notwithstanding the strong feeling that a different system should be established, no action to that end was taken until November 10, 1905, on which day an executive order was issued providing

that vacancies in the offices of secretaries of embassies or legations should thereafter be filled either by transfer or promotion from some branch of the foreign service, or by the appointment of a person selected by the President, if, upon examination, he be found qualified for the position. But even this order did not, to any appreciable degree, change the existing situation. Of it Mr. Foster said: "This executive order is an advance over any previous method of filling the lowest grade of diplomatic offices, but it has a serious defect. It does not remove admission into the service from the baneful influence of political favoritism, and hence offers the young men of the country little encouragement to prepare themselves for the diplomatic career. Besides, this executive order is not binding upon a succeeding President, and without legislation it cannot establish a permanent reform. . . . It will probably be many years before Congress will adopt the European system in full, but it is not too much to hope that provision shall be made by law whereby admission to the posts of secretaries shall be regulated by competitive examinations, that branch of the service made permanent, and that it shall be largely drawn upon to fill the place of ministers."

An act approved February 5, 1915, provided, among other things, that—

"Secretaries in the diplomatic service, and consuls general and consuls, shall hereafter be graded and classified as follows, with the salaries of each class herein affixed thereto:

SECRETARIES

Secretary of class one	$3,000
Secretary of class two	2,625
Secretary of class three	2,000
Secretary of class four	1,500
Secretary of class five	1,200

CONSULS GENERAL

Consul general of class one	$12,000
Consul general of class two	8,000
Consul general of class three	6,000
Consul general of class four	5,500
Consul general of class five	4,500

CONSULS

Consul of class one	$8,000
Consul of class two	6,000
Consul of class three	5,000
Consul of class four	4,500
Consul of class five	4,000
Consul of class six	3,500
Consul of class seven	3,000
Consul of class eight	2,500
Consul of class nine	2,000

"That the Secretary of State is directed to report from time to time to the President, along with his recommendations for promotion or for transfer between the department and the foreign service, the names of those secretaries in the diplomatic service and the names of those consular officers or departmental officers of employees who by reason of efficient service, an accurate record of which shall be kept in the Department of State, have demonstrated special efficiency, and also the names of persons found upon examination to have fitness for appointment to the lower grades of the service."

From the provisions of the act of 1915 it is seen that the present tendency is to place American foreign service upon a somewhat similar plane to that of European countries, and while, perhaps, the posts of ambassadors and ministers will always be held for distribution to the workers of successful political parties, there still remain many attarctive situations in the foreign field which other than politicians and their friends might hold.

Accepting the premise, the query remains whether it is beneficial to a legally trained man to enter the service. That a lawyer would find ample use for his talent is obvious. Indeed all writers seem agreed that a thorough general acquaintance with the law, Constitution, organization, and government of foreign states is very necessary; and, likewise, should a foreign representative be well-versed in the law of his own country, since matters may very frequently arise in which a clear exposition of it may be necessary to prevent serious misunderstanding. Although unfamiliar with the law of the country to which he might be accredited, it would come more natural to a man trained in the law to readily investigate and understand the foreign law, a knowledge of which is rendered advisable to enable such a representative to give useful advice and warning to his fellow countrymen who might be inad-

vertently about to transgress such laws. It is also clear that in the different municipalities of every country there are local usages and customs usually different from those obtaining in others, and it is therefore essential that a foreign representative be capable of understanding and applying these local laws.

Under the act of 1915 all of the consular offices and the secretaries of the diplomatic service are classified, and eligibility for promotion comes through efficient service. This enables one to enter the service in a minor position and gradually work up, and, if the present indication of rewarding meritorious service by promotion be further extended so as to include the higher posts, there would be in the diplomatic field much to attract the average lawyer, who, by his special training, is so well qualified to meet its requirements. Indeed, at the present time one entering the lower grades can look to at least a secretaryship to an embassy, and when it is understood that during the absence of the head of a foreign mission, for whatever cause, the first secretary remains in absolute charge as the official representative of his country, it is obvious that the post of secretary is quite important.

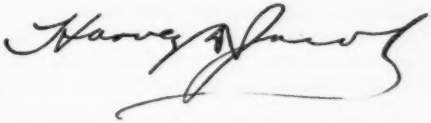
Of course, what has been said deals alone with the positions in the foreign service to be obtained by the ordinary individual. It would serve no useful purpose in this article to speak of the ambassadorships; for, as is well known, such posts usually come to those few through whose influence, wealth, or service a political tide might have been turned,—men who, as a general rule, have reached the heights of their profession, and are no longer concerned whether their foreign service might be of any advantage in the future pursuit of their calling; indeed, generally, in the acceptance of such appointments their profession is left behind never to be actively followed again.

But whether foreign appointments such as the average lawyer might seek will, after severance from the service, prove of value in the pursuit of his profession, presents a question difficult to answer. That one versed in the law would have much need of his knowledge has been shown, and that considerable notoriety and prestige will follow any diplomatic appointment is clear: but the query yet remains whether any advantages thus obtained would not be more than offset by a severance of relations with his clients and absence from his community, which, in this age of competition, so easily forgets one's very existence.

The inevitable conclusion can but be: (1) That if it is intended to make foreign service a lifetime profession, the attractions are many, especially since the present tendency is to reward efficiency and ability by promotion to higher posts.

(2) That if it is intended to enter the service for but a brief period in some reasonably important position, much prestige as well as training in international and foreign law would follow a retiring foreign representative back to his practice, undoubtedly to be of immense future advantage.

(3) The real danger of accepting a foreign post would seem to lie in the fact of continuing in the service just long enough to be lost sight of, in which event a return to the practice of law would encounter perhaps the same rocky road that most of us travel in our early days of staring at the walls until an unfortunate client appears.



Parliamentary Control Over Foreign Affairs

BY SIR THOMAS BARCLAY

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[Ed. Note.—This article is taken, by the kind permission of the author, from the introduction of his work entitled, "The Turco-Italian War and Its Problems."]

ONE consequence of the present war (the Turco-Italian War) and of the Morocco and Persian crises is that in the Parliaments of two states at least there has been a revolt against leaving momentous international issues in the uncontrolled discretion of their respective Foreign Offices. In England this again may have the further consequence of inducing politicians to pay more attention than they do at present to foreign affairs.

In France, in 1902, for the purpose of enabling private members to take an active part alongside the ministers in the preparatory part of legislation and the examination of suggestions and amendments, sixteen grand committees were appointed, among which practically all the special work of Parliament was divided up.[1] One of these deals exclusively with foreign affairs, protectorates, and colonies. Members of it, it is true, complain that they are not consulted more frequently or more consecutively, but they, nevertheless, keep a close watch on the work which is in train at the Quai D'Orsay, and all proposed treaty engagements are necessarily referred to the committee under French parliamentary procedure. Though this is done generally only after the country is practically pledged, the members of the committee, all the same, obtain *post hoc* experience of the special work allotted to them, and can receive ministerial explanations, when there may be doubt or hesitation, which it would be difficult to furnish in public. This in turn covers to some extent the foreign minister's responsibility. Nothing prevents him, moreover, from anticipating criticism even in the course of negotiations by conference with the committee.

In the United States Senate, the Foreign Relations Committee is in still closer contact with the State Department, and by no means confines itself to registering the acts of the Secretary of State. So strongly do American statesmen and politicians view the need of parliamentary control over foreign affairs that no clause in the American Constitution is more jealously enforced than that which requires Senatorial approval for all international engagements of the United States.[2] Senatorial debates on such matters are usually conducted with closed

[1] At the commencement of each legislature the Chamber of Deputies divides itself into sixteen "permanent grand committees," dealing each with one of the following special subjects: (1) Customs; (2) Labor; (3) Insurance; (4) Agriculture; (5) Public Works, Railways, etc.; (6) Judicial Reform, Civil and Criminal Legislation; (7) Army; (8) Navy; (9) Foreign Affairs, Protectorates and Colonies; (10) Education and Fine Arts; (11) Local Government and Public Worship; (12) Trade and Manufactures; (13) Fiscal Legislation; (14) Public Health; (15) Posts and Telegraphs; (16) Retrenchment generally (Commission des Economies).

[2] The United States Constitution of September 17, 1787, § 2 (2), provides that the President "shall have power, with the advice and consent of the Senate, to make treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers, and consuls. . . ."

doors, and nothing is more interesting to the British visitor to the Capitol than the frequency of these secret executive sittings.[3]

Recent events seem to show the desirability of the institution of a special committee of the House of Commons for foreign relations, which, recruited without party preference, should be able to communicate its views as a whole, as well as the views of individual members of it, to the Foreign Secretary as a matter of right and not as one of mere sufferance. There are many members of Parliament who have business interests in different countries which bring them into close contact with these countries, and enable them to obtain a greater personal experience of British interests in connection with them than public officials, however efficient, ever have a chance of obtaining. The fact that a certain number of competent representatives of the country in the House of Commons were paying special and effective attention to the national interests abroad would have a reassuring effect among the electorate. Such a committee, moreover, would serve as a nursery for the training of a certain number of members of Parliament in foreign affairs, and this again would enable these members to create throughout the country a greater and more intelligent interest in our foreign relations. The public has undoubtedly begun to feel, especially in the north of England, that foreign affairs are conducted in a manner not suited to the representative character of the institutions of a self-governing country. Without going the length of the United States Constitution, which makes the Senate a party even to the appointment of the chiefs of the diplomatic service, any careful critic can see that that service in this country stands in need of revision. The advice of a committee might shield the Secretary of State from the odium which is necessarily incurred in all public services by disregard of the claims of seniority. On the other hand, there are great objections to public discussion of the details of negotiations which even in the United States Senate are reserved for secret sittings; but full and frequent statements on foreign affairs, and the co-operation of the advisory committee of Parliament, would certainly help the Foreign Office to bring British foreign policy into closer harmony with the national feeling and interests.

[3] The late Senator Morgan once observed to the present writer while he was occupied at Washington with the study of American executive methods, that the American Constitution might be defective, it might make the life of a Secretary of State a burden to him, it might be unwieldy and ineffective for rapid action, but nobody could say of it that anything was done by the United States for which the constitutional guardians of the people's rights and interests did not take their full share of responsibility.

Special Powers and Privileges of United States Consuls in Extraterritorial Countries

:BY ALBERT H. PUTNEY

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IN ADDITION to those powers and privileges which they possess in common with the other consular officers of this country, the consular officers of the United States who are stationed in the so-called extraterritorial countries exercise certain additional powers and are entitled to certain additional privileges.

Extraterritoriality. — Extraterritorial rights, wherever they are still found in the world, are merely surviving remnants of the ancient system of racial law formerly existing universally, which has been superseded in America and western Europe by the system of territorial law. All early systems of law were the law for members of a certain race or religion, —never the law for all those residing within certain territorial limits.

The capitulations, and other treaties granting extraterritorial rights, therefore, merely continued the operation of a system as old as history, and did not create any innovation. Such treaties were not an acknowledgment of inferiority on the part of the country granting extraterritorial rights, nor were they considered as a privilege to the country receiving them; they were merely applications of the old legal theory, still prevalent in the Orient, that members of different races or religions should properly be judged according to different systems of laws.

Where Extraterritorial Rights May Exist.—In an instruction dated December 23, 1887, to the United States minister to Spain, Mr. Bayard, then Secretary of State, expressed the opinion that extraterritorial rights could only be claimed in non-Christian countries. This is the view of many authorities on international law, and is also the view which has been followed in the main by the United States government. There have been instances, however, of Christian countries exercising extraterritorial rights in other Christian countries. Thus the treaty of Berlin of 1878, when recognizing the independence of Roumania and Servia, provided that the extraterritorial rights granted by the Turkish capitulations should remain in force until terminated by the mutual consent of the interested countries. There have also been cases where extraterritorial rights were granted to the citizens of a non-Christian state residing in a Christian country.

It might be added, in this connection, that the old theory that the principles of international law were only observable between Christian countries has been entirely abandoned.

Extraterritorial Rights of the United States Derived from Treaties.—The special rights which are possessed by the United States consuls in extraterritorial countries depend for their existence absolutely and entirely upon the provisions of treaties between the United States and the countries in which these rights are exercised.

This point was distinctly decided by the Supreme Court of the United States in the case of Dainese v. Hale, 91 U. S. 13, 23 L. ed. 190, the decision in which case was in part as follows:

"Whilst, on the other hand, it is also conceded that in Pagan and Mahometan countries it is usual for the ministers and consuls of European states to exercise judicial functions as between their fellow subjects or citizens, it clearly appears that the extent to which this power is exercised depends upon treaties and laws regulating such jurisdiction. The instructions given by the British foreign office to their consuls in the Levant in 1844, as quoted by Mr. Phillimore, do not claim anything more. They say: 'The right of British consular officers to exercise any jurisdiction in Turkey, in matters which in other countries come exclusively under the control of the local magistracy, depends originally on the extent to which that right has been conceded by the sultans of Turkey to the British Crown; and, therefore, the right is strictly limited to the terms in which the concession is made.' . . . It may now be considered as generally true, that, for any judicial powers which may be vested in the consuls accredited to any nation, we must look to the express provisions of the treaties entered into with that nation, and to the laws of the states which the consuls represent."

Extraterritorial Rights only Terminable with Consent of State Possessing Such Rights.—The special rights possessed by United States consuls in extraterritorial countries are not temporary privileges, in the nature of a license, which can be revoked, at will, by the government which granted them; they are the permanent grant of certain sovereign powers.

In a telegram from the Secretary of State dated September 16, 1914, to the United States ambassador at Constantinople, the latter was instructed to notify the Ottoman government that the United States did not acquiesce in the attempt made by that government to abrogate the capitulations, and did not recognize that it had a right to do so, or that its action, being unilateral, had any effect upon the rights and privileges which the United States enjoyed under the capitulations.

This position is based upon the theory that as judicial and administrative rights pertain to the sovereignty of a state, extraterritoriality holds much the same relation to sovereignty over persons that international servitudes hold to sovereignty over territory, and that in neither case can the unconditional grant of sovereign rights be abrogated without the assent of the country which is the grantee.

The United States has always shown a willingness to surrender its rights of extraterritoriality in any country where it is convinced that the character of the national courts is such that the rights of United States citizens may safely be intrusted to their care. The United States, however, reserves to itself the right to be the sole judge of the wisdom of thus permitting cases involving the rights of United States citizens to be tried before the local courts.

Under this theory the transfer of certain territory from one country to another cannot devest or impair the special sovereignty over its own citizens which may be possessed by the United States in the territory in question. Such right can only be abolished with the consent of the United States. Up to within a comparatively recent period, the extraterritorial rights which a country possessed in certain territory continued without question, although there was a change in the country holding the sovereign power over the territory. For example, the extraterritorial rights which various western European countries possessed in Constantinople, under the eastern Roman Empire, continued to exist under the Ottoman Empire.

How the Extraterritorial Rights of the United States May Be Surrendered.—Extraterritorial rights possessed in certain territory by the United States may be suspended in their operation, but cannot be surrendered by the action of the State Department or of the President.

In an instruction dated November 23, 1882, to the United States minister to France, Mr. Frelinghuysen, Secretary of State, wrote:

"Inasmuch as the consular jurisdiction in Tunis, to which you refer, is expressly commanded by a statute of Congress, the renunciation of that jurisdictional right does not appear to be a matter within the control of the Executive of the United States, and it will therefore be necessary

to lay the subject before Congress, at its approaching session, and ask for appropriate legislation thereon."

On several occasions, however, the State Department has instructed its consuls in certain territory to suspend the exercise of their judicial powers, upon the annexation of such territory by a country in whose courts the United States has been willing that controversies affecting its citizens shall be tried. In such cases the extraterritorial rights of the United States have only been suspended, and not surrendered; but it is not to be supposed that the United States will ever attempt to revive the exercise of the judicial functions of its consuls in any territory where it has been thus suspended.

Provisions of United States Constitution and Statutes Regulating Judicial Powers of Consuls.—The view sometimes expressed, that the United States Constitution does not control and govern the exercise of judicial powers by United States consuls in extraterritorial countries, is entirely untenable. The government of the United States rests entirely upon the powers granted to it by the Constitution; if the Constitution, under any circumstances or in any place, ceases to be operative, the United States government must of necessity cease to have any power to act. The question often arises, however, as to the application of a certain portion or portions of the Constitution. It has been decided that there are parts of the United States Constitution which only have force within the territorial limits of the United States Union; but there are other provisions in the Constitution which give to the United States the right to acquire and exercise extraterritorial rights in foreign countries.

"The Constitution confers absolutely upon the government of the Union the powers of making war and of making treaties, consequently that government possesses the power of acquiring territory, either by conquest or by treaty." (Chief Justice Marshall in American Ins. Co. v. 356 Bales of Cotton, 1 Pet. 511, 7 L. ed. 242.)

As sovereignty over persons and sovereignty over territory are of the same general nature, the provisions of the Constitution here referred to are sufficient to support the legality of the acquisition of the rights of extraterritoriality by the United States.

It has been frequently decided by the United States Supreme Court that the provisions of the United States Constitution which regulate the methods of trial, both of civil and of criminal cases, only apply to trials held within the limits of the United States proper,—that they do not apply to trials held in the colonies of the United States, and still less can they be held to apply to trials conducted by United States consular or other officers in foreign countries.

"When, therefore, the representatives or officers of our government are permitted to exercise authority of any kind in another country, it must be on such conditions as the two countries may agree, the laws of neither one being obligatory upon the other. . . . The framers of the Constitution, who were fully aware of the necessity of having judicial authority exercised by our consuls in non-Christian countries, if commercial intercourse was to be had with their people, never could have supposed that all the guaranties in the administration of the law upon criminals at home were to be transferred to such consular establishments, and applied before an American who had committed a felony there could be accused and tried. They must have known that such a requirement would defeat the main purpose of investing the consul with judicial authority." (Re Ross, 140 U. S. 453, 35 L. ed. 581, 11 Sup. Ct. Rep. 897.)

It has been stated that the United States consular officers have acquired such judicial powers as they possess through the treaties made between the United States and various extraterritorial countries. Once acquired, these powers must be exercised in accordance with the provisions of the Constitution and statutes of the United States.

Civil Jurisdiction of Consuls.—Consular officers of the United States are invested by the provisions of the Federal Statutes (Rev. Stat. § 4085, Comp. Stat. 1913, § 7635) with the requisite judicial authority to execute the provisions of the treaties between the United States and

the various extraterritorial countries (named in §§ 4083 and 4125–29 of the Revised Statutes, Comp. Stat. 1913, §§ 7633 and 7669–75) "in regard to civil rights, whether of person or of property," and to "entertain jurisdiction in matters of contract, at the port where, or nearest to which, the contract was made, or at the port at which, or nearest to which, it was to be executed, and in all other matters, at the port where, or nearest to which, the cause of controversy arose, or at the port where, or nearest to which, the damage complained of was sustained, provided such port be one of the ports at which the United States are represented by consuls. Such jurisdiction shall embrace all controversies between citizens of the United States, or others, provided for by such treaties, respectively."

Law Administered by Consuls.—The Federal statutes provide that the consuls shall decide all cases which come before them "in conformity with the laws of the United States, . . . but in all cases where such laws are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies, the common law and the law of equity and admiralty shall be extended in like manner over such citizens and others in those countries, and if neither the common law, nor the law of equity or admiralty, nor the statutes of the United States, furnish appropriate and sufficient remedies, the ministers in those countries, respectively, shall by decrees and regulations which shall have the force of law, supply such defects and deficiencies." (Rev. Stat. § 4086.)

The wording of this section of the statute is not free from ambiguity.

Meaning of "Common Law." Great difficulty has often been experienced in deciding just what was meant by the term, "common law."

"Hence, it was not enough to enact that the common law should intervene to supply, in China, deficiencies in the law of the United States. For the question would be sure to arise: What common law? The common law of England at the time when the British colonies were transmuted into independent republican states? Or the common law of Massachusetts? Or that of New York, or Pennsylvania or Virginia? For all these are distinct, and in many important respects diverse, 'common law.'

"To dispose of this difficulty, the statute went one step further, and enacted that 'decrees and regulations' may be made from time to time by the commissioner, which shall have the force of law, and supply any defects or deficiencies in the common law and the laws of the United States." (7 Ops. Atty. Gen. 504.)

The "common law" is not part of the Federal law, and when the United States courts are obliged to enforce the common law, it has been held to be the common law of the several states.

The United States courts have always followed state statutes and decisions as rules of decisions in certain cases, and in regard to certain matters.

Section 34, chapter 20, of the judiciary act of 1789, 1 Stat. at L. 92, Comp. Stat. 1913, § 1538, provides "that the laws of the several states, except where the Constitution, treaties, or statutes of the United States shall otherwise require or provide, shall be regarded as rules of decision, in trials at common law, in the courts of the United States."

The Supreme Court of the United States, in the case of Swift v. Tyson, 16 Pet. 1, 10 L. ed. 865, construed and limited the application of this statute in the following language:

"It never has been supposed by us that the section did apply, or was designed to apply, to questions of a more general nature, not at all dependent upon local statutes or local usages of a fixed and permanent operation, as, for example, to the construction of ordinary contracts or other written instruments, and especially to questions of general commercial law, where the state tribunals are called upon to perform the like functions as ourselves, that is, to ascertain, upon general reasoning and legal analogies, what is the true exposition of the contract or instrument, or what is the just rule furnished by the principles of commercial law to govern the case. And we have not now the slightest difficulty in holding, that this section, upon its true intendment and construction, is strictly limited to local

statutes and local usages of the character before stated, and does not extend to contracts and other instruments of a commercial nature, the true interpretation and effect whereof are to be sought, not in the decisions of the local tribunals, but in the general principles and doctrines of commercial jurisprudence. Undoubtedly, the decisions of the local tribunal upon such subjects are entitled to, and will receive, the most deliberate attention and respect of this court; but they cannot furnish positive rules, or conclusive authority, by which our own judgments are to be bounded and governed."

In this decision and in those in the cases of Carpenter v. Providence Washington Ins. Co. 16 Pet. 495, 10 L. ed. 1044; Oates v. First Nat. Bank, 100 U. S. 239, 25 L. ed. 580, Brooklyn City & N. R. Co. v. National Bank, 102 U. S. 14, 26 L. ed. 61, and others, the Supreme Court of the United States, in substance, adopted and developed the doctrine of a general system of commercial laws, which the Federal courts would enforce in all cases which came before it, regardless of the place in which the controversy arose.

This general system of commercial laws, as recognized and laid down by the United States Supreme Court, is the law, which should be primarily enforced by the United States consuls in extraterritorial countries in their decisions in cases involving questions of commercial law.

Over Whom Jurisdiction of Consuls Extends.—The United States statutes (Rev. Stat. § 4086, Comp. Stat. 1913, § 7636) extend the laws of the United States over all citizens of the United States residing in extraterritorial countries, in so far as such action is necessary to execute the provisions of the treaties between the United States and extraterritorial countries, and so far as they are suitable to carry the same into effect. This provision should be construed as extending such laws over all citizens of the colonies of the United States. American consuls also possess jurisdiction over all seamen shipped and enrolled on merchant vessels of the United States, even in cases where such seamen are not United States citizens.

When United States consuls in extraterritorial countries take charge of the interests of other countries they can exercise only such functions with relation to the citizens of the country whose interests they represent as they could in nonextraterritorial countries. It is especially to be noted that the act of a United States consul in taking charge of the interests of a country in an extraterritorial country does not extend his judicial powers over the citizens of the country whose interests he represents. When consuls assume charge of the interests of other countries, they are instructed by the department that the arrangement contemplates the exercise of no official functions on their part, but only the use of unofficial good offices. The exercise of judicial power over citizens of another country cannot be held to be merely the use of unofficial good offices.

Associates with Consuls in Civil Cases.—Each of the United States consuls in extraterritorial countries is given jurisdiction, by statute, in civil cases, "wherein the damages demanded do not exceed the sum of $500; and, if he sees fit to decide the same without aid, his decision thereon shall be final. But whenever he is of opinion that any such case involves legal perplexities, and that assistance will be useful to him, or whenever the damages demanded exceed $500, he shall summon, to sit with him on the hearing of the case, not less than two nor more than three citizens of the United States, if such are residing at the port, who shall be taken from a list which had previously been submitted to and approved by the minister, and shall be of good repute and competent for the duty. Every such associate shall note upon the records his opinion, and also, in case he dissents from the consul, such reasons therefor as he thinks proper to assign; but the consul shall give judgment in the case. If the consul and his associates concur in opinion, the judgment shall be final. If any of the associates differ in opinion from the consul, either party may appeal to the minister, under such regulations as may exist; but if no appeal is lawfully claimed, the decision of the consul shall be final." (Rev. Stat. § 4107, Comp. Stat. 1913, § 7652.)

Criminal Jurisdiction of Consuls.—The criminal jurisdiction of the United States consuls, so far as it depends upon the United States statutes, is prescribed and regulated by the following sections of the Revised Statutes:

The consular officers of the United States "are fully empowered to arraign and try, in the manner herein provided, all citizens of the United States charged with offenses against law, committed in" the countries in which they are stationed "respectively, and to sentence such offenders in the manner herein authorized; and each of them is authorized to issue all such processes as are suitable and necessary to carry this authority into execution." (Rev. Stat. § 4084, Comp. Stat. 1913, § 7634.)

"Each of the consuls mentioned in § 4083 (see page 663, post; the application of this section has also been extended to apply to the countries mentioned in §§ 4125–4129 of the Revised Statutes, Comp. Stat. 1913, §§ 7669–7675, see pages 666, 667, 669, post), at the port for which he is appointed, is authorized upon facts within his own knowledge, or which he has good reason to believe true, or upon complaint made or information filed in writing and authenticated in such way as shall be prescribed by the minister, to issue his warrant for the arrest of any citizen of the United States charged with committing in the country an offense against law; and to arraign and try any such offender; and to sentence him to punishment in the manner herein prescribed." (Rev. Stat. § 4087.)

"Any consul when sitting alone may also decide all cases in which the fine imposed does not exceed $500, or the term of imprisonment does not exceed ninety days; but in all such cases, if the fine exceeds $100, or the term of imprisonment for misdemeanor exceeds sixty days, the defendants, or any of them, if there be more than one, may take the case, by appeal, before the minister, if allowed jurisdiction, either upon errors of law or matters of fact, under such rules as may be prescribed by the minister for the prosecution of appeals in such cases." (Rev. Stat. § 4089.)

"In all cases, except as herein otherwise provided, the punishment of crime provided for by this title shall be by fine or imprisonment, or both, at the discretion of the officer who decides the case, but subject to the regulations herein contained, and such as may hereafter be made. It shall, however, be the duty of such officer to award punishment according to the magnitude and aggravation of the offense. Every person who refuses or neglects to comply with the sentence passed upon him shall stand committed until he does comply, or is discharged by order of the consul, with the consent of the minister in the country." (Rev. Stat. § 4101.)

Capital cases for murder or insurrection against the government of either of the countries hereinbefore mentioned, by citizens of the United States, or for offenses against the public peace amounting to felony under the laws of the United States, may be tried before the minister of the United States in the country where the offense is committed if allowed jurisdiction. (Rev. Stat. § 4090.)

United States consular officers when sitting alone for the trial of offenses or misdemeanors have the power to finally decide all cases (and such cases only) where the fine imposed does not exceed $100, or the term of imprisonment does not exceed sixty days (Rev. Stat. § 4105); and "whenever in any case, the consul is of opinion that, by reason of the legal questions which may arise therein, assistance will be useful to him, or whenever he is of opinion that severer punishments than those specified in the preceding sections will be required, he shall summon, to sit with him on the trial, one or more citizens of the United States, not exceeding four, and in capital cases not less than four, who shall be taken by lot from a list which had previously been submitted to and approved by the minister, and shall be persons of good repute and competent for the duty. Every such associate shall enter upon the record his judgment and opinion, and shall sign the same; but the consul shall give judgment in the case. If the consul and his associates concur in opinion, the decision shall, in all cases, except of capital offenses and except as provided in the preceding section, be final. If any of the associates differ in opinion from the con-

sul, the case, without further proceedings, together with the evidence and opinions, shall be referred to the minister for his adjudication, either by entering up judgment therein, or by remitting the same to the consul with instructions how to proceed therewith." (Rev. Stat. § 4106.)

"Insurrection or rebellion against the government of either of those countries, with intent to subvert the same, and murder, shall be capital offenses, punishable with death; but no person shall be convicted of either of those crimes, unless the consul and his associates in the trial all concur in opinion, and the minister also approves of the conviction. But it shall be lawful to convict one put upon trial for either of these crimes, of a less offense of a similar character, if the evidence justifies it, and to punish, as for other offenses, by fine or imprisonment, or both." (Rev. Stat. § 4102.)

Compromise of Cases.—The statutes provide (Rev. Stat. § 4098) that the compromise of civil cases, or their reference to arbitrators by mutual agreement, shall be encouraged by the consuls, and that criminal cases (Rev. Stat. § 4099) which are not of a heinous character may be adjusted between the parties interested, and settled upon pecuniary or other considerations.

Evidence.—"In all cases, criminal and civil, the evidence shall be taken down in writing in open court, under such regulations as may be made for that purpose; and all objections to the competency or character of testimony shall be noted, with the ruling in all such cases, and the evidence shall be part of the case." (Rev. Stat. § 4097.)

Contempts of Court.—"No fine imposed by a consul for a contempt committed in presence of the court, or for failing to obey a summons from the same, shall exceed $100, nor shall the imprisonment exceed twenty-four hours for the same contempt." (Rev. Stat. § 4104.)

Countries in which Extraterritorial Rights Have Been Granted to the United States.—The countries where the consuls of the United States possess, or have possessed, extraterritorial judicial powers, fall into four classes with respect to the status of the exercise of such powers at the present time:

(1) Countries in which extraterritorial judicial rights are actually exercised by United States consuls at the present time.

(2) Countries in which the right of United States consuls to exercise such rights is undisputed, but in which the exercise of this right is in abeyance on account of the fact that no United States consul is at present stationed in such country.

(3) Countries where the United States consuls formerly exercised judicial powers, and where the right to exercise such powers has never been legally surrendered by the United States, but where the consuls have been instructed by the State Department to suspend the exercise of such powers. It is not to be supposed that the department will order the resumption of their judicial powers by the United States consuls in the countries of this class.

(4) Countries in which the United States formerly possessed extraterritorial judicial rights which have been surrendered by subsequent treaties.

In all, the United States have been granted by treaty extraterritorial judicial powers in the seventeen countries below referred to:

Algiers.—United States consuls possessed judicial powers in Algiers under the provisions of articles XIX. and XX. of the "Renewed Treaty of Peace and Amity" of 1816 between the United States and Algiers.

After the conquest of Algiers by France in 1830 the United States consuls ceased to exercise judicial powers in Algiers without any express agreement to that effect between the United States and France. The general Consular Convention of 1853 between these two countries may fairly be construed to include a waiver by the United States of the extraterritorial rights possessed and formerly exercised by the consuls in Algiers.

Borneo (Brunei).—Article IX. of the Convention of Amity, Commerce, and Navigation of 1850, between the United States and Borneo (Brunei), grants very full rights of jurisdiction in both civil and criminal cases affecting citizens of

the United States to "the American consul, or other officer duly appointed for that purpose." Brunei is now under a British protectorate, but as no United States consul has been stationed in recent years in this territory, the question of the surrender of the extraterritorial rights possessed by the United States has not arisen.

Korea (*Chosen*).—Judicial powers were possessed by United States consuls in Korea (Chosen) under the provisions of article IV. of the treaty of Peace, Amity, Commerce, and Navigation of 1882 between the United States and Korea.

The attitude of the United States towards the action of Japan in assuming jurisdiction over legal controversies affecting foreigners in Korea is set forth in a letter from the Secretary of State (answering an inquiry as to whether the extraterritorial rights of the United States in Korea had been surrendered), in which it is stated that "the American government, like all other interested governments so far as known, has in principle and in practice recognized Japanese jurisdiction in Korea, although no definitive declaration to that effect has been deemed necessary."

China.—Very extensive judicial powers are granted to the United States consuls in China "or other public functionary of the United States, thereto authorized, according to the laws of the United States" by articles XXI., XXIV., XXV., and XXIX. of the Treaty of Peace, Amity, and Commerce of 1844, articles XI. and XXVII. of the Treaty of Peace, Amity, and Commerce of 1858, and by article IV. of the Treaty as to Commercial Intercourse and Judicial Procedure of 1880 between the United States and China.

The exercise of judicial powers by the United States consuls in China was regulated by the act of Congress of June 22, 1860 (12 Stat. at L. 72, chap. 179, Rev. Stat. §§ 4083 et seq., Comp. Stat. 1913, § 7633, later incorporated in § 4083 of the Revised Statutes), as follows:

"To carry into full effect the provisions of the treaties of the United States with China, Japan, Siam, Egypt, and Madagascar, respectively, the minister and the consuls of the United States, duly appointed to reside in each of those countries, shall, in addition to other powers and duties imposed upon them, respectively, by the provisions of such treaties, respectively, be invested with the judicial authority herein described, which shall appertain to the office of minister and consul, and be a part of the duties belonging thereto, wherein, and so far as, the same is allowed by treaty."

The provisions contained in the Revised Statutes are greatly modified by the act of Congress of June 30, 1906, which created the United States Court for China.

A large part of the judicial jurisdiction possessed by the United States in China was transferred to this court by this act. The jurisdiction remaining to the United States consuls in China is set out in § 2 of the act, which is as follows:

"The consuls of the United States in the cities of China to which they are respectively accredited shall have the same jurisdiction as they now possess in civil cases where the sum or value of the property involved in the controversy does not exceed $500 United States money, and in criminal cases where the punishment for the offense charged cannot exceed by law $100 fine or sixty days' imprisonment, or both, and shall have power to arrest, examine, and discharge accused persons or commit them to the said court. From all final judgments of the consular court either party shall have the right of appeal to the United States Court for China: Provided, also, That appeal may be taken to the United States Court for China from any final judgment of the consular courts of the United States in Korea so long as the rights of extraterritoriality shall obtain in favor of the United States. The said United States Court for China shall have and exercise supervisory control over the discharge by consuls and vice consuls of the duties prescribed by the laws of the United States relating to the estates of decedents in China. Within sixty days after the death in China of any citizen of the United States, or any citizen of any territory belonging to the United States, the consul or vice consul whose duty it becomes to take possession of

the effects of such deceased person under the laws of the United States shall file with the clerk of said court a sworn inventory of such effects, and shall, as additional effects come from time to time into his possession, immediately file a supplemental inventory or inventories of the same. He shall also file with the clerk of said court within sixty days a schedule under oath of the debts of said decedent, so far as known, and a schedule or statement of all additional debts thereafter discovered. Such consul or vice consul shall pay no claims against the estate without the written approval of the judge of said court, nor shall he make sale of any of the assets of said estate without first reporting the same to said judge and obtaining a written approval of said sale, and he shall likewise, within ten days after any such sale, report the fact of such sale to said court, and the amount derived therefrom. The said judge shall have power to require at any time reports from consuls or vice consuls in respect of all their acts and doings relating to the estate of any such deceased person. The said court shall have power to require, where it may be necessary, a special bond for the faithful performance of his duty to be given by any consul or vice consul into whose possession the estate of any such deceased citizen shall have come, in such amount and with such sureties as may be deemed necessary, and for failure to give such bond when required, or for failure to properly perform his duties in the premises, the court may appoint some other person to take charge of said estate, such person having first given bond as aforesaid. A record shall be kept by the clerk of said court of all proceedings in respect of any such estate under the provisions hereof."

Egypt.—United States consular officers in Egypt possess judicial powers under the treaty of 1830 between the United States and Turkey. For a considerable period foreign consuls in Egypt exercised, in actual practice, a greater degree of judicial authority than the Ottoman government was willing to concede to consuls located in other portions of that Empire.

The extent of the judicial authority of the United States consuls in Egypt was reduced in 1876 by the creation of the so-called "Mixed Courts," which were given jurisdiction in all disputes in civil and commercial matters between native Egyptians and foreigners and between foreigners of different nationalities, and also criminal jurisdiction "over crimes and offenses committed by foreigners against the state, against natives, and against foreigners of different nationalities." The jurisdiction of the United States consuls was thus limited to cases in which citizens of the United States (or others owing allegiance to the United States) were alone interested.

Congress, in 1874, authorized the President to suspend the operation of the act conferring judicial authority on ministers and consuls, so far as it affected Egypt, and to notify the Turkish government and the Khedive of Egypt of the provisional acceptance of the new system. (18 Stat. at L. 23, chap. 62, Comp. Stat. 1913, § 7670.)

Ethiopia (Abyssinia).—The consular officers of the United States in Ethiopia (Abyssinia) have recently been granted judicial powers.

Extraterritorial jursdiction was granted to the French consuls in Ethiopia by the treaty of January 10, 1908, between France and Ethiopia. This same right immediately and automatically accrued to all the countries which had a treaty with Ethiopia containing a "most-favored nation" clause.

The United States at that time did not acquire these rights because of the provision in article I. of the treaty of 1903 between the United States and Abyssinia, which provided that the citizens of the two powers should submit "themselves to the tribunals of the countries in which they may be located."

The provision is omitted from the treaty between the United States and Ethiopia signed on June 27, 1914, and under the "most-favored-nation" clause in the last-mentioned treaty the United States consuls in Ethiopia now have the same judicial powers as those granted to the consuls of France by the treaty of 1908. (At the date of writing this treaty has not yet been ratified by the United States Senate.)

In practice in Ethiopia cases between

foreigners of different nations and between foreigners and Ethiopians are tried in the courts of the defendant's country.

Japan.—The civil and criminal jurisdiction of the United States consuls in Japan was recognized by article VI. of the treaty of Commerce and Navigation of 1858 between the United States and Japan; but this jurisdiction was abolished by article XVIII. of the treaty of Commerce and Navigation of 1894 between these countries.

Madagascar.—United States consuls in Madagascar had civil and criminal jurisdiction over United States citizens residing on that island under the provisions of article V. of the Treaty of Commerce and Navigation of 1867 and of article VI. of the Treaty of Friendship and Commerce of 1881 between the United States and Madagascar.

After Madagascar had been formally annexed by France the United States consuls in Madagascar were instructed by the State Department to "suspend, until further instructed, exercise of consular judicial functions in all cases where co-operation of an established French court is available for the disposition of judicial cases affecting American citizens."

The judicial and other extraterritorial rights of the United States in Madagascar, however, have never been formally or legally surrendered.

Morocco.—Morocco has always stood out conspicuously among the countries where the existence of extraterritorial rights are recognized, on account of the broad scope of such rights in this country.

It is possible to base the rights of extraterritoriality possessed by foreign countries in Morocco upon the Turkish capitulations, Morocco having been for a long period (at least nominally) subject to the authority of the Ottoman Empire. These rights, however, are more clearly established by the treaties directly entered into by the Shereefian Sultans of Morocco.

The rights of the United States in Morocco, up to the time of the Algeciras Conference, were based upon the treaty of 1836 between the United States and Morocco, and the Convention of Madrid of 1880 to which the United States, Germany, Austria, Belgium, Denmark, Spain, France, Great Britain, Italy, the Netherlands, Portugal, Sweden, Norway, and Morocco were parties.

The extraterritorial rights of the United States and the rules governing the consuls of the United States in Morocco were contained in articles 20 to 23, inclusive, of the treaty of 1836, which were as follows:

"Article XX. If any of the citizens of the United States, or any persons under their protection, shall have any dispute with each other, the consul shall decide between the parties; and whenever the consul shall require any aid or assistance from our government to enforce his decisions, it shall be immediately granted to him.

"XXI. If a citizen of the United States should kill or wound a Moor, or, on the contrary, if a Moor shall kill or wound a citizen of the United States, the law of the country shall take place, and equal justice shall be rendered, the consul assisting at the trial; and if any delinquent shall make his escape, the consul shall not be answerable for him in any manner whatever.

"XXII. If an American citizen shall die in our country and no will shall appear, the consul shall take possession of his effects; and if there shall be no consul, the effect shall be deposited in the hands of some person worthy of trust, until the party shall appear who has a right to demand them; but if the heir to the person deceased be present, the property shall be delivered to him without interruption; and if a will shall appear, the property shall descend agreeably to that will, as soon as the consul shall declare the validity thereof.

"XXIII. The consuls of the United States of America shall reside in any seaport of our dominions that they shall think proper, and they shall be respected and enjoy all the privileges which the consuls of any other nation enjoy; and if any of the citizens of the United States shall contract any debts or engagements, the consul shall not be in any manner accountable for them, unless he shall have given a promise in writing for the

payment or fulfilling thereof, without which promise in writing no application to him for any redress shall be made."

The "most-favored-nation" rights were also granted to the United States by the last sentence of the 24th article of the treaty, which provided that:

"And it is further declared that whatever indulgence, in trade or otherwise, shall be granted to any of the Christian powers, the citizens of the United States shall be equally entitled to them."

A matter of great importance in Morocco has always been the right of foreign ministers and consuls, and even to some extent private foreign merchants, to take under their protection a certain number of subjects of the Sultan, and to remove them, in most respects, from all subjugation to the regular laws of Morocco. The right of the United States to appoint such native *protégés* in Morocco up to 1880 rested upon the "most-favored-nation" clause of the treaty of 1836. By the terms of the Convention of Madrid the protected persons, or *protégés*, were divided into three classes:

1. Native employees of legations and consulates.

2. Native factors, brokers, or agents employed by foreign merchants carrying on the import or export trade on a large scale, for their business affairs.

3. Natives, not exceeding twelve in number, protected for exceptional services to the protecting power.

The most important of all the various treaties relative to the political status of Morocco was the protectorate treaty between France and Morocco, signed at Fez on March 30, 1912. This treaty practically marked the end of Morocco as an independent country, and the transformation of the greater portion of it into a French protectorate, closely resembling a French colony.

Muskat (Oman).—Article IX. of the Treaty of Amity and Commerce of 1833 between the United States and Muskat (Oman) grants judicial powers to the United States consuls in this country, and also gives to them the full rights and privileges of diplomatic officers.

The provisions of the Federal statutes relating to the judicial powers of United States consuls in extraterritorial countries were extended so as to regulate the judicial powers of consuls of this country in Muskat (Oman) by § 29, chapter 179, of act of June 22, 1860 (12 Stat. at L. 78, Rev. Stat. § 4127, Comp. Stat. 1913, § 7673).

"Sect. 4127. The provisions of this title, so far as the same are in conformity with the stipulations in the existing treaties between the United States and Tripoli, Tunis, Morocco, and Muscat, respectively, shall extend to those countries, and shall be executed in conformity with the provisions of the treaties, and of the provisions of this title, by the consuls appointed by the United States to reside therein, who are hereby *ex officio* invested with the powers herein delegated to the ministers and consuls of the United States appointed to reside in the countries named in § 4083, so far as the same can be exercised under the provisions of treaties between the United States and the several countries mentioned in this section, and in accordance with the usages of the countries in their intercourse with the Franks or other foreign Christian nations."

Persia.—Judicial power is expressly given to United States consuls in Persia by article V. of the Treaty of Friendship and Commerce of 1856, in the following language:

"All suits and disputes arising in Persia between the Persian subjects and citizens of the United States shall be carried before the Persian tribunal to which such matters are usually referred at the place where a consul or agent of the United States may reside, and shall be discussed and decided according to equity, in the presence of an employee of the consul or agent of the United States.

"All suits and disputes which may arise in the Empire of Persia between citizens of the United States shall be referred entirely for trial and for adjudication to the consul or agent of the United States residing in the province wherein such suits and disputes may have arisen, or in the province nearest to it, who shall decide them according to the laws of the United States.

"All suits and disputes occurring in Persia between the citizens of the United

States and the subjects of other foreign powers, shall be tried and adjudicated by the intermediation of their respective consuls or agents.

"In the United States, Persian subjects, in all disputes arising between themselves, or between them and citizens of the United States or foreigners, shall be judged according to the rules adopted in the United States respecting the subjects of the most favored nation.

"Persian subjects residing in the United States, and citizens of the United States residing in Persia, shall, when charged with criminal offenses, be tried and judged in Persia and the United States in the same manner as are the subjects and citizens of the most favored nation residing in either of the abovementioned countries."

The clearness of the language used in this article leaves little ground for doubt as to the extent of the judicial powers of the United States consuls in Persia.

There are no special treaty provisions as to the personal status of United States consuls in Persia, except that they shall "enjoy . . . the respect, privileges, and immunities granted . . . to the consuls of the most favored nation."

The provisions of the Federal statutes relating to the judicial powers of the United States consuls in extraterritorial countries were extended so as to regulate the judicials powers of the consuls of this country in Persia by § 28, chapter 179, of act of June 22, 1860 (12 Stat. at L. 78, Rev. Stat. § 4126, Comp. Stat. 1913, § 7672).

"4126. The provisions of this title shall extend to Persia, in respect to all suits and disputes which may arise between citizens of the United States therein; and the minister and consuls who may be appointed to reside in Persia are hereby invested, in relation to such suits and disputes, with such powers as are by this title conferred upon the ministers and consuls in China. All suits and disputes arising in Persia between Persian subjects and citizens of the United States shall be carried before the Persian tribunal to which such matters are usually referred, at the place where a consul or agent of the United States may reside, and shall be discussed and decided according to equity, in the presence of an employee of the consul or agent of the United States; and it shall be the duty of the consular officer to attend the trial in person, and see that justice is administered. All suits and disputes occurring in Persia between the citizens of the United States and the subjects of other foreign powers shall be tried and adjudicated by the intermediation of their respective ministers or consuls, in accordance with such regulations as shall be mutually agreed upon by the minister of the United States for the time being, and the ministers of such foreign powers, respectively, which regulations shall from time to time be submitted to the Secretary of State."

Samoa.—United States consuls in Samoa had judicial powers under the Treaty of Commerce of 1878, which was annulled by treaty of December 2, 1899, between the United States, Germany, and Great Britain.

Serbia.—By article XII. of the Consular Convention of 1881 the United States surrendered "the privileges and immunities hitherto enjoyed by their citizens in Serbia, in virtue of the capitulations with the Ottoman Empire, granted and confirmed to the United States by their treaties of 1830 and 1862. Provided always, and it is hereby agreed, that the said capitulations shall, as regards all judicial matters, except those affecting real estate in Serbia, remain in full force as far as they concern the mutual relations between citizens of the United States and the subjects of those other powers which, having a right to the privileges and immunities accorded by the aforesaid capitulations, shall not have abandoned them."

The proviso in this article of the treaty soon ceased to be of any practical importance, as by 1886 all the other countries having extraterritorial rights in Serbia had surrendered the same.

Siam.—By article II. of the Treaty of Amity and Commerce of 1856 between the United States and Siam very full judicial powers, both civil and criminal, over the citizens of the United States residing in Siam, are given a United States consul "who will be appointed to reside at Bangkok."

United States consuls in Siam are authorized to exercise judicial powers by § 1, chapter 179, of the act of June 22, 1860 (12 Stat. at L. 72, Rev. Stat. § 4083, Comp. Stat. 1913, § 7633), the provisions of which have already been given.

Tripoli.—Civil and criminal jurisdiction over citizens of the United States was given to consuls of this country by articles XVIII. and XIX. of the Treaty of Peace and Amity of 1805.

On October 30, 1912, the Italian Chargé d'Affaires notified the State Department that in view of the cessation of the special *régime* formerly enjoyed by foreigners in those regions by virtue of the capitulations of the Ottoman Empire, instructions have been given to the Italian authorities in Lybia to the effect that from November 1, 1912, the provisions of the general law would be applicable to foreigners.

In an instruction dated March 1, 1913, from the Secretary of State to the United States ambassador at Rome, the latter is instructed to notify the Italian government that the United States "diplomatic and consular representatives have been instructed to conform to the legal situation thus established in Lybia."

The extraterritorial rights of the United States in Tripoli must be considered to have been suspended, and not as yet formally surrendered.

Tonga.—Article XII. of the Treaty of Amity, Commerce, and Navigation of 1886 with Tonga gave the United States consuls both civil and criminal jurisdiction of citizens of the United States residing in that country.

Since May 19, 1900, the Tonga Islands have been under a British protectorate. There is no consul of the United States in these islands, but no action has ever been taken to formally surrender the rights of extraterritoriality possessed by the United States in this territory.

Tunis.—The judicial powers which consuls of the United States possessed in Tunis in virtue of the provisions of articles XX., XXI., XXII., of the Treaty of Amity, Commerce, and Navigation of 1797 between the United States and Tunis were surrendered, after the latter country had been annexed to France, by the treaty of May 9, 1904, between the United States and France.

Turkey.—United States consular officers in Turkey possess judicial powers in virtue of the provisions of the Treaty of Commerce and Navigation of 1830 between the United States and the Ottoman Empire.

Article IV. of this treaty (in the form in which it was ratified by the United States Senate) is as follows:

"If litigations and disputes should arise between subjects of the Sublime Porte and citizens of the United States, the parties shall not be heard, nor shall judgment be pronounced unless the American Dragoman be present. Causes in which the sum may exceed 500 piastres shall be submitted to the Sublime Porte, to be decided according to the laws of equity and justice. Citizens of the United States of America, quietly pursuing their commerce, and not being charged or convicted of any crime or offense, shall not be molested; and even when they may have committed some offense they shall not be arrested and put in prison, by the local authorities, but they shall be tried by their minister or consul, and punished according to their offense, following, in this respect, the usage observed towards other Franks."

The last clause of this article—"following, in this respect, the usage observed towards other Franks"—is construed as equivalent to a "most-favored-nation" clause, and to give to the United States all the rights which have been granted to any of the capitulatory countries by any of the "capitulations." The various "capitulations," in fact, are always considered together, on account of the presence in each of a "most-favored-nation" clause, or its equivalent, with the result that each of the capitulatory" countries in Turkey possesses the same rights.

The exact extent of these rights is very difficult to determine with absolute accuracy, and has been the occasion of many disputes. This is largely due to the early date of certain of the capitulations, and to the fact that all of these grants must be considered together in the determination of the exact extent of the powers and rights granted by them.

The capitulations did not originate with the Turks. The rulers of the Ottoman Empire merely adopted and extended a system which had been in existence for several centuries before the rise of that Empire. Two great streams, which up to the time of the Turkish conquests has flowed along in separate channels, united under the Turks to serve as the basis for the Turkish capitulations. One of these consisted of the series of capitulations granted by the Christian Emperors of the Eastern Roman Empire, and the other of the capitulations granted by the pre-Turkish Moslem rulers, whose territories comprised portions of what was later the territory of the Ottoman Empire.

There has always been a difference of opinion between the governments of the United States and the Ottoman Empire as to the correct wording of article IV. of the treaty of the United States. It is claimed by the Ottoman government that the phrases, "they shall not be arrested," and "they shall be tried by their minister or consul and punished according to their offense," are improperly inserted in the text of this article. The effect of omitting these words would be, of course, to greatly limit the extent of the criminal jurisdiction of the United States consuls in Turkey.

The exercise of the judicial powers possessed by the United States consuls in Turkey was first regulated by act of Congress in 1848 (9 Stat. at L. 276, chap. 150). A more comprehensive law on this subject was passed in 1860 (act of June 22, 1860, chap. 179, 12 Stat. at L. 76, Comp. Stat. 1913, § 7644). Section 21 of this act (now § 4125 of the Revised Statutes) provides that:

"The provisions of this title, so far as the same relate to crimes and offenses committed by citizens of the United States, shall extend to Turkey, under the treaty with the Sublime Porte of May 7th, 1830, and shall be executed in the Ottoman dominions in conformity with the provisions of the treaty, and of this title, by the minister and the consuls appointed to reside therein, who are hereby *ex officio* vested with the powers herein conferred upon the ministers and consuls in China, for the purposes above expressed, so far as regards the punishment of crime, and also for the exercise of jurisdiction in civil cases wherein the same is permitted by the laws of Turkey, or its usages in its intercourse with the Franks, or other foreign Christian nations."

Zanzibar.—The provisions of article II. of the treaty of 1886, relating to duties on liquors and consular powers between the United States and Zanzibar, gave to the United States consuls in Zanzibar all the "jurisdictional powers which are or may hereafter be enjoyed by the consuls and consular agents of the most favored nations."

The United States surrender all such rights by the "Treaty Relinquishing Extraterritorial Rights in Zanzibar" of February 25, 1905, with Great Britain.

Uncivilized Countries.—Consular officers of the United States, who may at any time be stationed in any territory not inhabited by any civilized people, are given judicial powers by § 4088 of the Revised Statutes:

"The consuls and commercial agents of the United States at islands or in countries not inhabited by any civilized people, or recognized by any treaty with the United States, are authorized to try, hear, and determine all cases in regard to civil rights, whether of person or property, where the real debt or damage do not exceed the sum of $1,000, exclusive of costs, and upon full hearing of the allegations and evidence of both parties, to give judgment according to the laws of the United States, and according to the equity and right of the matter, in the same manner as justices of the peace are now authorized and empowered where the United States have exclusive jurisdiction. They are also invested with the powers conferred by the provisions of §§ 4086 (see supra, page 659) and 4087 (see supra, page 661) for trial of offenses or misdemeanors."

Other Countries.—"The provisions of this title relating to the jurisdiction of consular and diplomatic officers over civil and criminal cases in the countries therein named shall extend to any country of like character with which the United States may hereafter enter into treaty relations." (Rev. Stat. § 4129.)

New Possibilities of a Bill of Sale

BY MAX EHRLICH

Of the New York Bar

ON THE 30th day of June, 1915, there was recorded in the register's office of New York county under the number 46677, a bill of sale in the usual printed form, in and by which one "Samuel Gaimes of the city, county and state of New York, party of the first part, in consideration of the sum of $1 paid by Moritz and Becky Green of the same place, parties of the second part, does grant and convey unto the said parties of the second part, their executors, administrators and assigns, the good will, right, title and interest, in and to my child Molly, who was born in the city of New York, borough of Manhattan, county and state of New York, and said Gaimes gives up all his rights to the said child and the said child is to remain the said child of the said parties of the second part, and the said Gaimes renounces all his rights to said Molly from this day until the expiration of his natural life." The bill of sale apparently was not drawn up by any attorney, but appears upon its face to have been signed and acknowledged on June 26, 1915, before a notary public, who presumably drew the bill of sale.

No doubt to the minds of the legal practitioners who read the accounts in the newspapers of this novel method of transferring his rights to a child by a parent to a third party, a great many interesting questions presented themselves, of which perhaps the following stand out prominently: Did this notary public discover a happy medium whereby he could satisfactorily circumvent the New York statutes upon the subject of adoption, and thus deprive attorneys of fees which they might otherwise earn, and which have usually in adoption proceedings ranged from $25 to those consisting of three figures, depending of course upon the pecuniary ability of their particular clients? And, secondly, can a child be made a proper subject of a bill of sale?

It might not be amiss at this point to state briefly the New York statutes relating to the subject of adoption, as contained in §§ 110–113 of the domestic relations law. Section 111, relating to the matter of consent, provides as follows: "Whose consent necessary."

1. Of the minor, if over twelve years of age.

2. Of the foster parent's husband or wife, unless lawfully separated, or unless they jointly adopt such minor.

3. Of the parents or surviving parent of a legitimate child, and of the mother of an illegitimate child; but the consent of a parent who has abandoned the child, or is deprived of civil rights, or divorced because of his or her adultery or cruelty, or adjudged to be insane, or to be a habitual drunkard, or judicially deprived of the custody of the child on account of cruelty or neglect, is unnecessary; [amended in 1915 by adding: excepting, however, that where such parents are divorced because of his or her adultery or cruelty, notice shall be given to both the parents personally or in such manner as may be directed by a judge of a court of competent jurisdiction].

4. Of a person of full age having lawful custody of the child, if any such person can be found, where the child has no father or mother living, or no father or mother whose consent is necessary under the last subdivision. If such child has no father or mother living, and no person can be found who has the lawful custody of the child, the judge or surrogate shall recite such facts in the order allowing the adoption.

[5. Where a minor to be adopted is of the age of eighteen years or upwards, the judge or surrogate may direct, in his discretion, that the consents of the persons referred to in the preceding subdivisions of this section shall be waived, if in his opinion, the moral or temporal interests of such minor will be promoted thereby and such consents cannot, for any reason, be obtained. Where the person to be adopted is of the age of twenty-one years and upwards, the consents of the persons referred to in the preceding subdivisions of this section shall not be required.] (Added in 1915.)

Section 112. *Requisites.*—1. The foster parents, minor,[1] and all the persons whose consent is necessary under the last section, must appear before the county judge or the surrogate of the county where the foster parent or parents reside, and be examined by such judge or surrogate, except as provided by the next subdivision.

2. They must present to such judge or surrogate an instrument containing substantially the consents required by this chapter, an agreement on the part of the foster parent or parents to adopt and treat the minor as his, her or their own lawful child, and a statement of the age of the child [1] as nearly as the same can be ascertained. . . . The instrument must be signed by the foster parent or parents and by each person whose consent is necessary to the adoption, and severally acknowledged by said persons before such judge or surrogate, but where a parent or person or institution having the legal custody of the minor resides in some other country, state or county, his or their written acknowledged consent, or the written acknowledged consent of the officers of such institution, certified as conveyance are required to be certified to entitle them to record in a county in this state, is equivalent to his or their appearance and execution of such instrument. [Amended in 1915 by adding: In all cases where the consents of the persons mentioned in subdivisions one, two, three and four of section one hundred and eleven have been waived as provided in subdivision five of such section, or where the person to be adopted is of the age of twenty-one years or upwards, notice of such application shall be served upon such persons as the judge or surrogate may direct.]

Section 113. *Order.*—If satisfied that the moral and temporal interests of the child [1] will be promoted thereby, the judge or surrogate must make an order allowing and confirming such adoption, reciting the reasons therefor, and directing that the minor [1] shall thenceforth be regarded and treated in all respects as the child of the foster parent or parents. Such order, and the instrument and consent, if any, mentioned in the last section must be filed and recorded in the office of the county clerk of such county.

The party of the first part in the bill of sale has by its terms surrendered absolutely, by contract, all his rights to his child, the habendum clause in the bill of sale containing the usual words "to have and to hold the same unto the parties of the second part, their executors, administrators, and assigns forever," and by making the child the subject of contract and sale the child has been placed in the same category with merchandise or any other marketable property usually made the subject of contracts of sale.

[1] Amended in 1915 by substituting "person to be adopted" for word "child" or "minor."

Beaumont, in his Treatise on the Law of Bills of Sale, defines a bill of sale as "an instrument in writing generally but not necessarily under hand and seal, whereby one man transfers to another the property he has in goods and chattels." If, therefore, a child can be classed as goods and chattels, then the bill of sale of course is perfectly valid. No argument, however, is necessary upon such an absurd proposition, for the bill of sale clearly is an instrument against public policy in that it contains as its subject a child who is made the object of a sale by a parent to a stranger. Whatever may be the law relating to parent and child, certainly a parent has no right of property in a child, the only relationship being one that is recognized in law as the peculiar and necessary affinity which exists between parents and their offspring. In 32 Cyc. 651, the following definition of property appears: "Property includes whatever things may be made the subject of ownership and all rights, titles, and interests therein. That only is property which the law recognizes as such, and so there may be things in which there is no right of property." Generally speaking, every species of personal property may be made the subject of sale, but there must be a legal ownership recognized as such by the law. A parent assuredly has no such legal ownership over a child, for in certain instances the state has a right to intervene in behalf of children, which right is very often superior to that of parents. That a child cannot be classed with merchandise and other objects of sale is well illustrated in the leading case of Chapsky v. Wood, 26 Kan. 650, 40 Am. Rep. 321. Justice Brewer in his opinion at page 652 thus clearly lays down the law:

> The second proposition of law is that a child is not in any sense like a horse or any other chattel, subject-matter for absolute and irrevocable gift or contract. The father cannot by merely giving away his child release himself from the obligation to support it, nor be deprived of the right to its custody. In this it differs from the gift or sale of any article which is only property. If to-day Morris Chapsky could give a horse to another party that gift is for all time irrevocable, and the property can never be reclaimed; but he cannot by simply giving away his child release himself from the obligation to support that child, nor deprive himself of the right to

its custody. I might add here that the statute has provided for a relinquishment through probate court proceedings which may be considered irrevocable (but that is outside this case).

The cases dealing with the surrender by parents of their children to others are varied and many, but all seem to uniformly hold, except in those states where statutes have been passed providing for the adoption of children, that agreements by parents with others, giving over to the others the custody of children and surrendering the legal rights thereto, are not binding, and that a parent may at any time, through proper proceedings, regain possession of his child. It was held in one case that a parol agreement by which the father of a child confers the permanent custody of such child on another is not binding. Cormack v. Marshall, 122 Ill. App. 208, following Weir v. Marley, 99 Mo. 484, 12 S. W. 798, 6 L.R.A. 672. In the latter case of Weir v. Marley, which is a leading case on this subject, Justice Brace, writing the opinion, held that (page 495):—

> An analysis of the many cases to which we have been cited by counsel serves only to confirm in our judgment the correctness of the ruling of this court in the case of Re Scarritt, 76 Mo. 565, 43 Am. Rep. 768, that a father cannot, by contract other than such as are provided for by statute, confer upon another irrevocably and absolutely as against himself, the right and interest to his minor child; that notwithstanding any such contract, upon habeas corpus for the custody of such child, the custody will be awarded to the father unless the welfare of the child demands that it should remain in or be restored to the custody of the person with whom it was placed by the father under such contract.

The English law upon this question is that an agreement by which the father surrenders the custody of his child is not binding, and that he is at liberty to revoke his consent at any time afterwards and obtain the child by a writ of habeas corpus. See Schouler on Domestic Relations, 3d ed. p. 394.

The important point, however, is the fact that where a statute provides a specific remedy, the statute must be followed strictly, especially where the statute is in derogation of the common law. The common law did not recognize such a thing as adoption, and consequently any statute making provisions therefor must be strictly adhered to. Schouler on Domestic Relations at page 395, 3d edition, states:

> The general doctrine appears to us on the whole to be this,—that public policy is against the permanent transfer of the natural rights to children by parents; and that such contracts are not to be specifically enforced . . . excepting in parts of the United States where the principles of legal adoption are part of the public policy.

And at page 362, the same author continues:

> Whatever may be prescribed by the legislator regarding adoption should, therefore, be followed strictly as in derogation of the common law.

Thus in the case of Johnson v. Terry, 34 Conn. 259, it was clearly held that the statute which provides a mode by which a parent may give away a child in adoption implies necessarily that it can be legally done in no other way. It necessarily follows, therefore, that the particular bill of sale in question has no legal standing, since it is a clear violation of the New York statutes.

There is, of course, a distinction between permitting one to retain the custody of a child temporarily, or the surrendering by the parent of all his rights to a child absolutely to another. In the former case the object can be accomplished by mere mutual consent, whereas in the latter case, as already shown, the statutes, if such there are, must be strictly adhered to. In the case of Miller v. Miller, 123 Iowa, 165, 98 N. W. 631, it was held that a parent may confer on some other person the legal right to the custody of his minor child without the execution of adoption papers, but the court clearly pointed out the distinction between custody and adoption as follows:

> Under the law of this state, and we will presume that the same rule prevails elsewhere, adoption of children can only be accomplished by appropriate writings made and recorded; short of this there is but the right of custody together with such rights as may be incident thereto.

While there are several New York cases upholding the validity of agreements by parents surrendering their rights to a child to a third person, and further holding that the parent cannot revoke his release of the right to the custody or recover possession of the

child, these cases were decided before the adoption laws now in effect, and are not now binding. Thus in Re Murphy, 12 How. Pr. 513, a child in infancy was given verbally to an uncle and aunt who cared for the infant, giving it the proper care and tuition for nine successive years. It was held that the uncle and aunt, especially when in accordance with the child's interest and inclinations, were entitled to a parent's rights. "Naturally the parents of the child under such circumstances had no legal claim to it," the court stating at page 215:

> The statute of guardianship (2 Rev. Stat. 150) declares that the father of a child under twenty-one may dispose of its custody and tuition during its minority or for any less time to any person. . . . But did not nine years of undisputed possession on the one part, and of uninterrupted acquiescence on the other, constitute as good evidence of the understanding of the parties as any written instrument?"

In the mind of the writer the real question to be considered by the legal fraternity of New York is not so much the illegality of the bill of sale in question which the writer believes should be conceded, as the fact that it constitutes another instance of an attempt to practise law by one who is apparently not a member of the profession. Certainly no bill of sale of the kind concerning which this article has been written would be drawn up by any attorney, and the lawyer most assuredly would have followed the sections of the domestic relations law relating to adoption, in transferring the rights to a child by Gaimes to Green. However, the subject of the illegitimate attempt to practise law by nonattorneys is a question of serious consideration, which would require an article or treatise by itself, and no doubt this subject will give thought to many members of our profession.

Max Ehrlich.

When Judges Quarrel

Sometimes when brothers of the gown
Politely call each other down
The lawyers on their seats below
Good natured smiles and humor show
While startled jurists stare and frown.

And though it be undignified
For judges—much to judges chide—
The members of the bar agree
It is a source of choicest glee
To see them show their human side.

And when the gentlemen above
Their traits of human nature prove
The gentlemen below outdone
Enjoy the non-judicial fun
With pleasing thoughts of peace and love.

Wm D Fetter

Notes on Authorship of Disputed Numbers of the Federalist

BY S. A. BAILEY

of the Salt Lake City Bar

IN OUR judgment, the construction given to the Constitution by the authors of the Federalist (the five numbers contributed by Chief Justice Jay related to the danger from foreign force and influence, and to the treaty-making power) should not and cannot be disregarded."—Chief Justice Fuller, in Pollock v. Farmers' Loan & T. Co. 158 U. S. 601, 627, 39 L. ed. 1108, 1122, 15 Sup. Ct. Rep. 912.

As stated by Mr. Henry Cabot Lodge in his Introduction to the Federalist, Constitutional Edition, Alexander Hamilton, vol. XI., page xvi:

"The total number of essays, according to modern numbering, and as agreed to by both Hamilton and Madison, is eighty-five. Of these, the following have never had their authorship disputed by anyone, and are to be thus assigned:

"To Hamilton 1, 6, 7, 8, 9, 11, 12, 13, 15, 16, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 59, 60, 61, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85,—in all, 49.

"To Madison 10, 14, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48,—in all, 14.

"To Jay 2, 3, 4, 5,—in all, 4.

"This disposes of 67 numbers, and leaves 18 to be still accounted for,—*i. e.*, 17, 18, 19, 20, 21, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 62, 63, 64."

Mr. Lodge then proceeds to demonstrate, by evidence which seems quite conclusive, that of the disputed essays Hamilton was the author of numbers 17 and 21, and Jay of number 64, and attributes numbers 18, 19 and 20 to Hamilton and Madison jointly. This leaves only 12 numbers unaccounted for,—49 to 58, inclusive, and 62 and 63. Mr. Lodge concludes by saying with respect to these: "No one is entitled to assign the disputed numbers to either Hamilton or Madison with absolute confidence. They were surely written by one or the other, and with that unsatisfactory certainty we must fain be content."

For the following reasons I am convinced that all of these twelve disputed numbers should be assigned to Madison.

As stated by Mr. Lodge, (lb., page xxviii):

"The essays from 49 to 58, are inclusive, all deal with the same general subject of the popular element in the Constitution, including representation in the lower House, and on their face they certainly seem to be from the same pen."

Indeed, in reading these numbers, 49 to 58 inclusive, one cannot help remarking that the style, which is *de l'homme*, is Madison's, and not Hamilton's. Hamilton wrote with more spontaneity and *élan* than Madison. His style is less labored, more direct, positive, and convincing than Madison's. His soul was on fire with his subject, and his keen mind saw and seized every fact and argument in their true light, and gave them due force and perspective. Madison, on the contrary, wrote with a halting and unready hand, guided by the slow and deliberate mind of a careful and painstaking student. His scholarship embraced a comprehensive study of the history of states and statesmanship, which were to Hamilton almost an intuition. No greater compliment can be bestowed on Madison than that, under the fascination of Hamilton's genius, he wrote at times in a manner which so nearly approached the master that it is hard to distinguish between them. It should also

be remembered that at this time Madison was free from the dominating influence of his elder friend and closer ally, Jefferson, who was absent on the mission to France.

In Mr. Lodge's Constitutional Edition, Alexander Hamilton, vol. XI., at page 108, this expression occurs in number 14, an undisputed Madison essay: "Is it not to the glory of the people of America that, whilst they paid a decent regard to the opinions of former times," etc.

In number 18, at page 141, this use of the word occurs: "Whilst the Amphictyonic Confederacy remained," etc. In number 19, at page 150: "These causes support a feeble and precarious Union; whilst the repellent quality," etc. The general style of numbers 18, 19, and 20 seems to be Madison's rather than Hamilton's, although there may be in them some collaboration or revision by Hamilton. At the time these essays were published, neither New York nor Virginia had yet ratified the Constitution, and Madison returned to Virginia to aid the good cause there, while Hamilton worked with might and main in New York, where his work was crowned with success by the ratification of the Constitution, on July 26, 320. It is true that in the edition cited there occurs in number 81, which is undoubtedly Hamilton's, vol. XII., page 286, the word "whilst;" but in the same number on page 284 the word "while" occurs twice, and it is a fair assumption to say that this use of the word "whilst" was either a typographer's mistake, that Hamilton may have inadvertently used it, or that it was, consciously or unconsciously, an imitation of Madison.

On the whole, therefore, it seems almost conclusive that Madison was right when he claimed to be the author of numbers 49 to 58, inclusive, and of numbers 62 and 63. Hamilton's list should, therefore, have read:

Numbers 2, 3, 4, 5, 64, by Jay; total 5.

Numbers 10, 14, 37 to 58, inclusive, 62 and 63, and (probably with Hamilton's collaboration) 18, 19, 20, by Madison; total 29.

All the others, 51 in number, by Hamilton.

This result agrees with the statement of Fiske (Critical Period of American History), speaking of the Federalist, at page 341: "Of the eighty-five numbers originally published in the 'Independent Gazetteer' under the common signature of 'Publius' Jay wrote five, Madison twenty-nine, and Hamilton fifty-one."

In the following numbers, which are attributed to Madison without dispute, the use of the word "whilst" occurs: Number 37, at page 289; number 38, at page 302; number 41, at page 333; number 43, at page 367; number 44, at pages 368 and 373; number 45, at pages 382 and 384, in vol XI; and in number 46, at page 4, vol. XII.

Coming now to the twelve disputed numbers, 49 to 58, inclusive, and 62 and 63, the word "whilst" occurs in number 49, vol. XII., page 35; number 51, pages 47 and 49; number 53, page 61; number 56, page 84; number 57, page 87 (his); number 3, page 135. Furthermore, as already stated, the general tone and character of all these disputed numbers seem to be Madison's.

Instances of the use of the word "while" by Hamilton may be found as follows, in numbers which are assigned to him without dispute: Vol. XI., pages 113, 167 (bis), 189; vol. XII., pages 159, 194, 201, 217, 235, 238, 242, 250, 284 (bis), 314.

One little circumstance, however,—the use of one little word,—seems to indicate quite clearly that these disputed numbers were the product of the brain and pen of Madison.

In an unfinished preface, to volume III., of the Documentary History of the Constitution he uses the characteristic word: "Whilst the colonies enjoyed the protection of the parent country," etc. Again, on page 6, "whilst ["the" stricken out] it was contended by others," etc. Appendix, 796, *a:* "Whilst the paper emissions of Congs. continued," etc. Instances of the use of this word "whilst" occur in Madison's messages to Congress, as follows, Messages of Presidents, vol. 1, pages 469, 485 (his), 495, 515, 534, 568, 580. He never uses the word "while."

J. A. Bailey

Assigned By the Court

BY MARVIN LESLIE HAYWARD

Of the Hartland (N. B.) Bar

AND I bequeath to my beloved nephew Marcus Lloyd, the only son of my deceased brother John, and now a student in the Law Department of Standvard University, the sum of $7,000 annually, until such time as he, the said Marcus Lloyd, shall have won his first case in any court of record in the said state of New York. Provided, however, and this bequest is upon the express condition, that the said Marcus Lloyd shall be duly admitted to the legal profession in said state within two years from the date thereof, and shall continue a member of said profession in good and regular standing.

"Upon the termination or failure of the said bequest to said Marcus Lloyd as aforesaid, I bequeath to Donald Kent, the nephew of my deceased wife, and also a law student, the like sum of $7,000 annually for a period of four years, subject to the conditions aforesaid."

The late Jacob Lloyd had always regarded the foregoing as a masterpiece of human forethought.

"I've always had a fatherly interest in the two boys," he told the lawyer who drew the document, "and this will give them both a good start. Marcus will be through a year or so ahead of Donald, and the $7,000 a year'll keep him going till he can earn his own way; for the first two or three years at the law business is generally pretty tough, I'm told."

"It is," agreed the lawyer feelingly.

"Then," continued Lloyd, "by the time Marcus gets established, Donald will just about be starting in, and $7,000 a year for four years ought to put him on his feet pretty well."

In due time Lloyd passed away; his will was admitted to probate, and at first it seemed that things would work out about as he had planned.

Marcus graduated, was admitted to practice, opened an office, and clients came in goodly numbers; but he confined himself entirely to office business, and hired some of the other lawyers to do all his court work.

Then Donald graduated and started in, and still Marcus had not won his first case, nor did he manifest any intention of doing so. The $7,000 a year paid a standing counsel to try his court cases, and still left him a very tidy margin.

But, while he had succeeded in jockeying Donald out of the income, he was not so successful when he competed with him in social matters; and when he proposed to Elsie Morrow he met with a decided refusal, although he had not failed to mention the income which he was in a position to retain as long as he wished.

"Then you prefer Donald?" he queried bitterly.

"I did not say so," replied the girl; "but I see no reason why I should not."

"All right," sneered Marcus; "but you'll accept him minus $7,000 a year if you do."

Donald called the next evening, quoted the will for the hundredth time, and drew an alluring picture of the cosy home and early marriage which the additional income would render possible.

"And you are satisfied that you are morally entitled to the income?" queried Elsie.

"Certainly," was the positive reply. "It's simply a 'shyster' scheme for nullifying uncle's plain intention."

"I'm no lawyer, if I am Judge Morrow's daughter," remarked Elsie; "but it seems to me that there should be some way of compelling him to carry out his uncle's wishes. That's justice anyway."

"But it's not law," replied Donald gloomily.

"I'm going to speak to father about it, just the same," declared Elsie.

"The judge's opinion would be valuable," agreed Donald; "but being on the bench, he, of course, is not in a position to assist me in any way," and the judge, when Elsie explained the situation, took exactly the same view.

"As a judge, I am, of course, entirely impersonal and cannot be moved by private considerations, even if I were able to do anything," he declared; "and besides, of course, Marcus is a free moral agent, and cannot be compelled to win a suit if he don't want to."

The next day the case of the People v. Niccolo was being tried before the judge; and the prisoner, in answer to the usual question, stated that he had no counsel to defend him and no current coin to employ one.

"It will be necessary for the court to assign counsel to defend the accused,"[1] remarked the judge, glancing over the array of attorneys present.

He caught sight of Marcus, who had dropped in for a whispered consultation with one of the lawyers, who was to try a case for him that afternoon, and the provisions of the will of Jacob Lloyd, as Elsie had quoted it, came to the judge like a flash. Instantly his quick legal mind caught the situation.

"Mr. Lloyd will defend the prisoner," he remarked in a cold, judicial tone.

"But—but I can't—I will not," stammered Lloyd.

"You are an officer of the court,"[2] remarked the judge, "and are not at liberty to decline the appointment.[3] Of course, if you refuse, you do so on your own responsibility."

Marcus did some rapid mental calculation. If he refused, while he was not sure on the point, he felt pretty certain that he could be disbarred for contempt of court, and would then cease to be in "good standing," which would stop the payment of the legacy under his uncle's will. On the other hand, if he defended the prisoner and cleared him, the result would be the same. On the whole, he decided to take chances on the lesser of the two pressing evils, and sulkily announced that he would act.

The trial proceeded, and Marcus's defense is still spoken of as a classic model of how not to conduct a case.

"If the prisoner is convicted," remarked one of the listening lawyers, "he ought to sue Lloyd for damages."

"You and I can't afford to lose cases. He can't afford to win," replied the other, who had drawn and probated Jacob Lloyd's will.

The judge's charge to the jury was clear, colorless, and impartial, as usual. Possibly he referred quite strongly to certain phases of the evidence in favor of the prisoner, which Marcus had failed to bring out; but he probably felt it necessary in order to give the accused a fair deal, in view of the blundering attempts of his own counsel.

While the jury were out, Marcus paced the corridor in a frenzy of anxiety, and when the foreman announced that they had found the prisoner "not guilty," he stumbled out of the court with a muttered malediction on the judge that would have disbarred him for contempt if uttered aloud.

That evening Donald explained to Elsie the turn which affairs had taken, and when he had gone she rushed into the library, radiant and happy.

"O, papa, you did make things come out right after all," she cried. "I knew you could."

"I know and care nothing about the collateral results of my judicial acts," he replied, a trifle sternly, she thought. "As I told you, I have no personal interest whatever in the various cases that come before me."

[1] Where the accused is too poor to provide counsel for himself, the court has the power, which it ought and usually does exercise, to assign counsel to him. 12 Cyc. 534.

[2] 4 Cyc. 898.

[3] Barnes v. Com. 92 Va. 794, 23 S. E. 784.

The Jury's Little Question

BY EDGAR WHITE

COLONEL Joseph Denny of Hazel Dell was not only a great lawyer, but he was a profound student of the Bible. It was with pride he admitted that his was the largest Sunday school class in the county seat. His keen interest in the Bible and church matters in no wise interfered with his success as a lawyer. In truth he insisted that his study of the Good Book was of more help to him in handling his cases than the law books, for in it was a more uniform code of justice than anything laid down by the law writers of Europe or America. He took the Bible as the foundation for all legal principles. If supreme courts differed, why, the supreme courts were wrong.

It was the colonel's habit in arguing a case to quote freely from the Bible. He had all of its axioms clear in mind, and made them fit somewhere in every case he pleaded. Opposing lawyers were afraid to quote the Scriptures lest they make a mistake, and the return blast from the Colonel would sweep them off their feet. That would look bad in the jury's eyes.

But Colonel Denny wasn't afraid to quote it! No, sir! And as most jurymen in the district court were from the country, and had to go to church regularly by their wives' edicts, the force of the colonel's applications was not lost upon them.

At a certain term of court, Joseph Strong and Ben White were counsel for a man who had sued a merchant for selling a stock of goods, claiming a verbal contract of 5 per cent commission. The merchant, who was of high standing in his community, declared he had found the purchaser himself, and that he never had any conversation whatever with the plaintiff about selling the stock for him. The purchaser testified the plaintiff had not had anything to do with influencing him to make the deal.

Colonel Denny was the attorney for the defendant, who had made an excellent witness, and stood the fire of cross-examination well.

Strong and White didn't like the looks of their case after the evidence was in. Colonel Denny had riddled their client, who was at last driven to the final refuge of the prevaricating witness,—"I don't know." The attorneys for the plaintiff had a consultation before the arguments, and they agreed on a trap for the opposing lawyer,—one into which he would certainly fall. According to the rule, each side would have half an hour to argue. That meant one of the plaintiff's lawyers would lead off with a fifteen-minute talk to the jury, then Colonel Denny would have half an hour to reply for the defense, and the other attorney for the plaintiff would be given fifteen minutes to wind up the case.

Strong spoke first. He cautioned the jury to beware of lying witnesses, citing Sapphira, who "was turned into a pillar of salt."

Colonel Denny looked up horrified. Then he grabbed some paper, and wrote furiously.

Strong calmly proceeded with an analogous description of Joseph, who "sold his farm for a mess of potash."

He said the defendant had, since the evidence disclosed the true facts in the case, "seen a white light, as had Peter while on his way to Jerusalem after letters authorizing him to hang the Philistines."

"The defendant, like old Goliath, had come out from the ranks of the Pharisees to defy Moses and the children of Israel, but Daniel, the hunter, had slain him with his little bow and arrow."

Noting the eager attention opposing counsel was giving his remarks, and that he was not making any objections on the

ground of irrelevancy, Strong found a way to bring in the story of the "eunuch, captain of the guard for Cleopatra, queen of the Egyptians," and to tell how, while out riding on his camel one day he met John, who had prevailed on him to be baptized.

During the fifteen minutes he had, Strong possibly delivered more manufactured history than was ever before released in the same time. Even before he reached his chair, Colonel Denny, eyes flashing, was on his feet making reply from the inaccurate statements he had set down.

He cleared up the mist surrounding the end of Sapphira by stating she and her husband had kept back "part of the price," and fell dead when Peter accused her of it, and said it was Lot's wife, instead of Sapphira, who had been turned into a pillar of salt.

Continuing with increasing vehemence, Colonel Denny said only a half-baked biblical student like Strong would have the effrontery to admit he didn't know it was Saul—afterwards Paul—who had seen the white light while on the way to Damascus—not Jerusalem—for letters against the Christians. "There wasn't a thing said about hanging the Philistines," declared Colonel Denny, "and any man who has ever been in the same room with the Bible knows it!"

All the while the old graybeards on the jury were nodding approvingly, and thus encouraged Colonel Denny rolled up his sleeves and went on demolishing Strong's absurd statements with withering sarcasm. After straightening out the story of David and Goliath, the colonel said it was not Cleopatra whom the eunuch served, but Candace, queen of the Ethiopians—"Strong, that eminent scholar, said 'the Egyptians,'" sneered Colonel Denny. "The eunuch did not travel on a camel, but in a chariot. Philip was with him, not John, and when they came to a stream it was the eunuch himself who proposed that he go into the water and have Philip administer the rite of baptism."

"Time's up, colonel," said the court, snapping his watch.

Colonel Denny looked at the judge in amazement. He hadn't realized until then that his half hour had flown away, and that he hadn't touched his case, side, edge, or bottom. But it was not until White, associate counsel for the defense, began talking that the colonel realized what a shameful scheme had been played on him. White heartlessly left Strong crushed to earth under the terrific onslaught Colonel Denny had made upon his biblical quotations, and bored directly into the issues of the case. His was the only real argument made to the jury upon the subject they were trying.

The big crowd, which had quickly grasped the shrewd stratagem, was intensely amused, and waited for the jury to report. Ninety-nine out of a hundred men in the audience would have wagered their last dollar that Strong and White had won their case, but hour after hour went by, and still no knock was heard on the door of the jury room. At midnight the judge directed the sheriff to bring the jury out. The twelve men walked wearily toward the bar and lined up in front of the court. They were red-eyed and scowling.

"Gentlemen," asked the judge, "are you anywhere's near a verdict?"

Several heads shook negatively.

"The case seems simple enough," remarked the court. "What seems to be the matter, Uncle Henry?" addressing the gray-whiskered foreman.

Uncle Henry coughed and grasped his long beard thoughtfully.

"It's that baptizin' business, judge," he replied. "Whether that man Enoch was put down under the water or just sprinkled,—we're just six and six on the proposition."

Edgar White.

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Editorial Comment

For fate has wove the thread of life with pain.—Pope.

Case and Comment
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The Right to Live

A MALFORMED and defective child, whose life might possibly have been prolonged by an operation, was permitted to die recently in a Chicago hospital. The incident provoked widespread comment. It presented in a striking way a tremendous problem, as to which there was a sharp conflict of opinion. Has not a human being, whose only offense is its deformities, the right to live? Is it permissible, as a matter of social welfare, to allow a monstrous creature, so poorly endowed that it can barely be said to have been, to cease to be? We need not concern ourselves with the particular case, but only with the discussion to which it gave rise.

The law throws the mantle of its protection over every human being, from the instant of the first pulsation of independent life. It does not distinguish between the fortunate and the unfortunate child. A physician has no right to terminate the life of a new-born infant, no matter how horrible the deformity, for no one shall be deprived of life without due process of law. There exists no process of law by which this result, however desirable, can be accomplished.

If we are to depart from the recognized duty of the physician to save life, irrespective of what that life may have to endure or will inflict on others, we should constitute a tribunal similar to that of ancient Sparta, which passed upon the right of every child to live. Sparta wanted warriors. Its tribunal saved the babe capable of withstanding the intensive physical training in youth, preparatory to a service of arms, and exposed the weakling to die. This made the Greeks for ages the most militant, unconquerable people in the world. It produced a race of wonderful men and splendid women. This result was attained by rigorously sacrificing the individual to the welfare of the state. As relentless as Nature, they were careless of the single life, but careful of the type.

The great question would be where to draw the line. Each individual case would have to be decided on its merits. A commission of physicians and expert eugenists would do well to remember that many persons finely endowed physically go through life merely functioning as superb human animals. It would

be an incomparable misfortune to eliminate all children inflicted with infirmities at birth. Had this been done, English literature would have been deprived of the verse of Pope and Byron, of the charming prose of De Quincy and Stevenson. There would have been no Napoleon, no Talleyrand. Marshall P. Wilder would never have entertained the world. In fact, the most brilliant minds are often enshrined in frail and sickly bodies.

The avalanche of criticism directed at the Chicago incident is eloquent of our deep underlying belief in the sacredness of human life. Our age is eminently humanitarian, and little likely to return to Spartan ideals. We are more apt to deal with these problems by more stringent supervision and regulations, aimed at securing better heredity, better environment, and increased care of children.

Renunciation of Citizenship

SINCE the commencement of the European war, thousands of native-born or naturalized Americans have entered the military service of foreign governments. The oath of enlistment involves a pledge of allegiance to the sovereign and state to which the army belongs, and automatically severs pre-existing American citizenship. This is apparent from the act of March 2, 1907, by which Congress ordained "that any American citizen shall be deemed to have expatriated himself when he has taken an oath of allegiance to any foreign state."

It is probable that thousands of these expatriated Americans will desire to return to this country when the European armies are disbanded. Many will be surprised to learn that they can no longer call themselves citizens of the United States, and can only regain such right by naturalization. Their status will raise problems for the immigration authorities and for the courts.

If military service does not suffice to confer foreign citizenship upon these soldiers of fortune, they will constitute an anomalous class, *viz.*, that of men without a country.

Increase of Consular Service

IN VIEW of the peculiar opportunities afforded at the present time for the development of American commerce in other countries, a referendum has been sent out by the Chamber of Commerce of the United States, which gives the members of the national organization an opportunity to indorse a report of its department of commerce committee. This recommends an increase in congressional appropriations for the general broadening and improving of the government's foreign commercial service. The questions are being submitted to the various commercial bodies throughout the country,—nearly 700 affiliated organizations representing every state, the territorial possessions, and the principal American Chambers of Commerce abroad.

In considering increases that in its opinion should be made for the consular service—under the Department of State—and the Bureau of Foreign and Domestic Commerce—under the Department of Commerce—the committee, of which A. W. Shaw, of Chicago, is chairman, makes many specific suggestions.

In the opinion of the Chamber's committee the most pressing needs of the consular service, of which Wilbur J. Carr is the director, are:

1. Americanization.
2. Adequate clerical assistance.
3. Promotion of certain consular agencies to the rank of consulates.
4. The establishment of new consulates.
5. The adequate inspection of the service.

The report gives a list of cities in which the United States government maintains consular agencies, where, in the committee's opinion, there should be consulates. It recommends the establishment of consulates in fifteen new cities, and urges more adequate provision for inspectors, and more frequent inspection. Finally, a fuller publication of statistics of internal commerce relative to the movements of trade is urged. The committee recommends the resumption of the publication of such statistics, initiated several years ago, and suspend-

ed, owing to the failure of Congress to continue the appropriation.

The committee recommends the investigation in foreign countries, particularly, of investment possibilities, and of railroad rates and other means of inland transportation. It recommends also expert study of banking and tariffs. In this field it also urges an appropriation for the collection and exploitation of samples, the appointment of geographical experts at Washington who shall inform business men regarding climate, living conditions, and similar information in addition to data strictly commercial; the distribution of American literature abroad, and a radical change in the attitude of the government toward the traveling and living expenses of its consuls, commercial agents, and commercial *attachés*.

A list of salaries paid to lower grade consuls at posts where the cost of living is very high shows some startling things. In cities where the United States is one of the strongest competitors of Great Britain and Germany for the world's markets the following figures of salary show how handicapped the American consul is:

	Great Britain	Ger.	U. S.
Vladivostok	$4,865	$5,783	$3,500
Rosario	4,865		3,500
Tunis	4,379 & house	5,093	2,500
Petrograd	5,459	8,151	3,500
Batum	3,893	4,392	2,500

With regard to salaries of commercial *attachés* and consuls the committee's recommendation is:

"The salary should be commensurate with the importance of the position, and a special fund provided, or some other method adopted, for adjusting the difference in living expenses among officers of the United States of equal rank, to meet cases in which living expenses are materially in excess of the average."

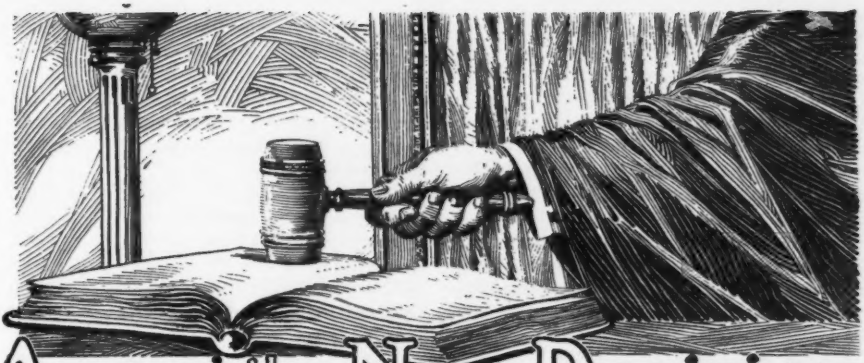
Special consideration is given to the Bureau of Foreign and Domestic Commerce, of which Dr. Edward E. Pratt is the chief, in the committee's report, to the matter of promotion of commerce in Latin America. During the present year a congressional appropriation of $50,000 is available for this purpose. Next year the amount will be $75,000. It is generally believed that with the close of the European war we may be able to hold against European competitors a goodly proportion of the markets for American products which we have now gained in Latin American countries. The committee believes that the appropriation of $75,000 for 1916 should be increased.

There are now ten commercial *attachés* accredited to American embassies or legations in foreign countries. "The new service has already proved of value, and its extension to other countries is strongly recommended." The countries to which commercial *attachés* are accredited are: Great Britain, Russia, Brazil, Argentina, Chile, Peru, Australia, China. The committee recommends that the *attachés* now assigned to Australia be transferred to one of the following countries, and that new *attachés* be appointed to cover others: Italy, Scandinavia, Spain, Austria, Japan, and Turkey.

In countries where the commercial interests of the United States are not sufficiently important to justify the appointment of an *attaché*, or where the United States maintains no legation, or where the commercial representative is to cover a number of countries, the committee recommends the use of the title "Trade Commissioner." These officials to perform the same services as commercial *attachés*, the committee believes, should be appointed to Australia and New Zealand, South Africa, British India, Greece and the Balkan States, East Indies and Central America.

In its report of 1913 the committee recommended that the commercial *attachés* should be appointed and promoted under the civil service law. Although this recommendation was not adopted, the Secretary of Commerce has seen fit to apply an examination system in selecting appointees. "The committee now renews its recommendation that commercial *attachés* should be appointed and promoted under the civil service law, and it believes that the same sound principle should be applied to trade commissioners, if appointed, and to commercial agents."

The results of the referendum will doubtless be submitted to Congress and may be expected to influence its action.



Among the New Decisions

A good Judge decides fairly, preferring equity to strict law.

Assault — striking another's horse. Striking a horse driven by another, from malice, wantonness, or recklessness, so that the driver is injured, is held an assault in Lambrecht v. Schreyer, 129 Minn. 271, 152 N. W. 645, annotated in L.R.A.1915E, 812, which further holds that one who whips up his own horses to great speed and passes the team of another, driving near and yelling loudly, if such acts are done recklessly and in such manner as to be likely to produce injury, and so that they do cause injury, commits an assault.

Automobile — riding with drunken chauffeur — negligence. One is held negligent in the California case of Lynn v. Goodwin, 148 Pac. 927, L.R.A. 1915E, 588, in riding in an automobile with knowledge that the chauffeur is drunk, so as to prevent his holding the driver of another automobile liable, because of the speed at which he was driving, for injury to him by a collision between the two cars, if the injury was caused by the act of the driver of the car in which he was riding.

Bank — seizure of property by state — constitutional law. A bank is held not deprived of its property without due process of law in State Sav. & Commercial Bank v. Anderson, 165 Cal. 437, 132 Pac. 755, annotated in L.R.A.1915E, 675, by proceedings under a statute authorizing the bank superintendent to take possession of its assets whenever he shall have reason to conclude that it is in an unsound condition, or that it is unsafe or inexpedient for it to continue business. Nor is a limitation of the right of a bank whose property has been summarily seized because the bank superintendent deemed it to be in an unsafe condition, to bring an action to recover possession of its property to ten days, such an arbitrary discrimination against banking institutions as to deprive them of the equal protection of the laws.

Bankruptcy — partnership — property of partner. An individual partner who has not been adjudged a bankrupt may be required, it is held in Francis v. McNeal, 228 U. S. 695, 57 L. ed. 1029, 33 Sup. Ct. Rep. 701, L.R.A.1915E, 706, to turn over his separate estate for administration to the trustee in bankruptcy of the firm, where the partnership and individual estates together are not enough to pay the partnership debts, —especially where such partner has not objected that he should have been put into bankruptcy, and where assuming that the case is within the provision of the bankrupt act of July 1, 1898, § 5, that "in the event of one or more but not all of the members of a partnership being adjudged bankrupt," the partnership property may be administered by the partners not so adjudged, and does not

come into bankruptcy at all except by consent, such partner has never objected to the administration of the firm property by the trustee. Prior to this decision there was some difference of opinion among the courts as to proceedings in bankruptcy against a partnership without calling in the individual partners.

Bills and notes — negotiability — discount for prepayment. A promissory note, it is held in the Nebraska case of Farmers' Loan & T. Co. v. Planck, 152 N. W. 390, L.R.A.1915E, 564, is not rendered non-negotiable by the insertion of the following provision: "A discount of 6 per cent will be allowed if paid in full within fifteen days from date."

Broker — failure of sale — commission — misrepresentations to vendor. That brokers cannot recover commissions on a sale of real estate which fails because of defect in title as to a portion of the property, where the vendor had recently purchased the property through them on their representations as to title and boundaries, and immediately listed the property with them for resale, is held in the Virginia case of Leonard v. Vaughn, 85 S. E. 471, annotated in L.R.A.1915E, 714.

Brokers — minimum price — right to purchase. That real estate brokers who are to receive for their services all over a specified minimum price which they can obtain for the property may themselves become the purchasers is held in the Michigan case of Hutton v. Sherrard, 150 N. W. 135, annotated in L.R.A. 1915E, 976.

Bulk sales law — validity. Forbidding a merchant to dispose of his stock in bulk without giving notice to creditors is held in Boise Asso. v. Ellis, 26 Idaho, 438, 144 Pac. 6, annotated in L.R.A. 1915E, 917, not to deprive him of his property without due process of law, nor is it invalid as class legislation.

Carrier — duty to transport cripple. A railway company, it is held in Hogan v. Nashville Interurban R. Co. 131 Tenn. 244, 174 S. W. 1118, cannot refuse to transport an unattended young man merely because, by reason of infantile paralysis, he is obliged to use crutches, if he is capable of caring for himself without further assistance than the carrier is accustomed to afford passengers generally.

Recent cases on the duty of a carrier to accept as a passenger one physically or mentally disabled, accompanies the foregoing decision in L.R.A.1915E, 788, the earlier authorities having been gathered in a note in 26 L.R.A.(N.S.) 171.

Carrier — injury to passenger by pistol shot — liability. A railroad company whose employees without interference permit its porter to assault a passenger and advance on him with a deadly weapon, threatening to kill him, is held liable in the Arkansas case of St. Louis, I. M. & S. R. Co. v. Jackson, 177 S. W. 33, to another passenger who takes no part in the affray, for wounds inflicted by a pistol shot fired by the assaulted passenger in an endeavor to protect himself. Supplemental annotation on carrier's liability for assault by servant on passenger while on train accompanies the foregoing decision in L.R.A. 1915E, 668.

Contract — by one doing business under assumed name — enforceability. Failure of one doing business under an assumed name to file a certificate showing his real name, as required by statute providing punishment for failure to do so, it is held in Sagal v. Fylar, 89 Conn. 293, 93 Atl. 1027, L.R.A.1915E, 747, does not render contracts made by him in the prosecution of the business unenforceable.

Contract — to pay for support — necessity of writing. That a contract to pay money in consideration of support for life is within a statute making invalid, unless in writing, an agreement which is by its terms not to be performed during the lifetime of the promisor, is held in the California case of Hagan v. McNary, 148 Pac. 937, accompanied in L.R.A.1915E, 562, by supplemental annotation.

Death — action in favor of decedent barred — effect. One of the perplexing questions arising from the statutes permitting recovery for personal injuries resulting in death is the effect on the remedy there given of the fact that the right of action by the injured person to recover for the injuries has been barred by the statute of limitations.

The case of Kelliher v. New York C. & H. R. R. Co. 212 N. Y. 207, 105 N. E. 824, annotated in L.R.A.1915E, 1178, holds that an administrator who by statute may maintain an action for wrongful death within two years thereafter if decedent left husband, wife, or next of kin, against one who would have been liable to decedent had death not ensued, cannot maintain an action if decedent's right to sue was barred by limitation before his death.

Death — marriage after injury — damages. That a woman's marriage took place after her husband had received a mental injury through another's negligence is held in Radley v. Le Ray Paper Co. 214 N. Y. 32, 108 N. E. 86, L.R.A.1915E, 1199, not to prevent her recovering substantial damages for his death as executrix of his estate, where the statute permits the personal representative of a decedent who has left a wife surviving, to recover damages for the wrongful act by which the death was caused, against the one who would have been liable to an action in favor of decedent had death not ensued.

Deed — intoxication — effect. A deed executed by a person so destitute of reason as not to know the nature or consequences of his act, though his incompetency be produced by intoxication, is held voidable in Coody v. Coody, 39 Okla. 719, 136 Pac. 754, L.R.A.1915E, 465, and may be avoided by himself, though the intoxication was voluntary and not produced by the circumvention of the other party.

Divorce — refusal to proceed — default in payment of alimony. The court, it is held in the Washington case of State ex rel. Crombie v. Superior Ct. 148 Pac. 882, annotated in L.R.A.1915E, 567, may refuse to proceed to trial of an action for divorce while the husband fails to comply with its order to pay alimony *pendente lite*, notwithstanding he has appealed from the order.

Easement — parol license — expenditure of money. That no easement is created by constructing an irrigation ditch under parol license across land of the licensor where the licensee was given a permanent right of way until the reclamation service should provide other means for conducting water to the land of the licensee is held in the Arizona case of Davis v. Tway, 147 Pac. 750, L.R.A.1915E, 604.

Elevator — boy operator — injury — liability. A storekeeper, it is held in Jones v. Co-operative Asso. 109 Me. 448, 84 Atl. 985, L.R.A.1915E, 745, may be found negligent and held liable for the consequent injuries where he employs a boy below the statutory age to run his elevator, who, while a passenger is alighting, leaves the operating lever unguarded and in the presence of another boy, who has made attempts to get control of the lever, and who, while it is so unguarded, seizes it and starts the car with a jerk to the injury of the passenger.

Elevators — operation without call bell — negligence. It is held not negligence *per se* in Wright v. Selden-Breck Constr. Co. 97 Neb. 840, 151 N. W. 926, L.R.A.1915E, 740, to operate an elevator without a call bell in an unfinished building not open to the public, but only to employees and licensees of the contractor.

It is further held that one who desires to call an elevator in an unfinished building should act with care and caution. An elevator shaft is a place of danger, and if one carelessly thrusts his head through an opening in the door into the shaft, and on account of such negligence he suffers injury, he is not entitled to recover damages.

Eminent domain — operation of railroad — injury to abutting property. The injury to property abutting on a duly authorized railroad track, by smoke

and cinders due to the non-negligent operation of the road, is held not a taking for which compensation must be made in Roman Catholic Church v. Pennsylvania R. Co. 125 C. C. A. 629, 207 Fed. 897, L.R.A.1915E, 623.

Executor — forgery of decedent's name — ratification. The first case to pass upon the question of ratification by an executor or administrator of his own forgery of decedent's name seems to be the Maine case of Walker v. Portland Sav. Bank, 93 Atl. 1025, L.R.A.1915E, 840, which holds that one appointed administrator of decedent's estate after forging an order upon decedent's bank account in his own favor cannot ratify the order so as to absolve the bank from liability to an administrator *de bonis non* on the theory that he was acting as executor *de son tort,* if the making of the order was the only act he did as representative of the estate before his appointment.

Explosives — negligence in leaving exposed. It is held gross negligence in Clark v. E. I. Du Pont de Nemours Powder Co. 94 Kan. 268, 146 Pac. 320, annotated in L.R.A.1915E, 479, for an agent of a powder company, after shooting an oil well with solidified glycerin, to leave a quart of that explosive lying near the well; and the act of a workman, unskilled in the use of such substances, in removing the dangerous article and placing it in a stone fence of a near-by graveyard to prevent injury to himself and his fellow workmen, does not amount to an unrelated, intervening, and efficient cause, so as to excuse the powder company from its liability for damages to children who afterwards find the solidified glycerin and are injured by it.

Extradition — abandonment of wife — act not within jurisdiction. An unusual question was considered in the Nevada case of Ex parte Roberson, 149 Pac. 182, L.R.A.1915E, 691, which holds that one is not a fugitive from justice subject to extradition, who, after leaving his wife with her consent and going to another state with no intention of abandoning her, forms within the latter state such intention, although he is subsequently indicted for such abandonment at his former domicil.

Guardian and ward — sale of ward's property — caveat emptor. The doctrine of *caveat emptor,* it is held in the Iowa case of Stonerook v. Wisner, 153 N. W. 351, annotated in L.R.A.1915E, 834, does not apply to a sale by a guardian of his ward's real estate under order of court, so as to deprive the purchaser of a city lot of relief because of diminution in value of the property on account of a public right of way over a portion of the lot of which neither party was aware.

Highway — unguarded excavation — liability. Where a city, in bringing a street to grade, excavates such street to a depth of several feet at a point where it intersects with a well-established road which has been constantly traveled for years (although such road has not been laid out as a street), and by such excavation creates and leaves a place of danger, unguarded and without barriers or signals to warn one accustomed to travel said road and enter the street at the place of such excavation, it is held liable in the Oklahoma case of De Long v. Oklahoma City, 148 Pac. 701, which is accompanied by supplemental annotation in L.R.A.1915E, 597, for damages sustained by such person being precipitated into such excavation and injured.

Injunction — to prevent enforcement of by-law of labor union. An injunction, it is held in the Rhode Island case of Rhodes Bros. Co. v. Musicians' Protective Union, 92 Atl. 641, annotated in L.R.A.1915E, 1037, will not lie in favor of the proprietor of a dance hall against a musicians' union, to prevent the enforcement of a by-law forbidding members of the union to serve one who has broken a contract with its members, upon its determination after hearing that his discharge of an orchestra employed by him for incompetency was a breach of his contract, although the effect will be to prevent him from employing union musicians.

Insurance — accident — suicide when insane — liability. Insurance against accidental injury which provides that insurers shall not be liable for payment of any sum whatever, if the injury is sustained by insured when insane, is held in Interstate Business Men's Acci. Asso. v. Atkinson, 165 Ky. 532, 177 S. W. 254, annotated in L.R.A.1915E, 656, not to cover suicide if it is committed when the insured is so insane that he is not liable to understand the nature of his act.

Insurance — automobile — theft — diminution in value. Diminution in the value of an automobile because of theft is held in Federal Ins. Co. v. Hiter, 164 Ky. 743, 176 S. W. 210, accompanied by supplemental annotation in L.R.A.1915E, 575, to be within the operation of a policy insuring against any loss or damage if amounting to $25 or more, on any single occasion by theft, robbery, or pilferage, although the policy also provides that in the event of loss or damage the insurer shall be liable only for the actual cost of repairing, or, if necessary, replacing the parts damaged or destroyed.

Insurance — place for valuing personalty. In valuing, under a policy providing that the insurer shall not be liable beyond the actual cash value of the property, with proper deduction for depreciation, however caused, bar fixtures located where prohibition was adopted after the policy was issued, their value, it is held in Prussian Nat. Ins. Co. v. Lawrence, 221 Fed. 931, is not limited to their worth at such place, but must be ascertained at the nearest fair market, subject to deduction for transportation.

The authorities on consideration of time and place in determining the value of personal property for purposes of fire insurance are gathered in the note appended to the foregoing case in L.R.A. 1915E, 489.

Insurance — total loss — inability to repair. When an insured building is injured by fire to such an extent as to destroy its use as a building, and require it to be demolished or removed, the insured, it is held in the Nebraska case of Dinneen v. American Ins. Co. 152 N. W. 307, will be entitled to recover as for a total loss. Such construction of the valued policy law does not deprive the insurance company of its property without due process of law.

Recent cases on the subject accompany the foregoing decision in L.R.A. 1915E, 618, the earlier authorities having been discussed in notes in 56 L.R.A. 784, and 39 L.R.A.(N.S.) 1182.

Joint debtors — recovery — single satisfaction. But one satisfaction, it is held in Dwy v. Connecticut Co. 89 Conn. 74, 92 Atl. 883, accompanied by supplemental annotation in L.R.A.1915E, 800, can be obtained for a personal injury negligently inflicted by several joint tort feasors, and therefore, under a reservation of a right to sue others when releasing one, only such recovery can be had as, together with the amount received from the one released, will amount to satisfaction.

Landlord and tenant — assignment of lease — liability. The assignee of a lease, who assumes no obligation by contract to pay rent, is held liable in Cohen v. Todd, 130 Minn. 227, 153 N. W. 531, annotated in L.R.A.1915E, 846, for rent during the time he holds the lease, but, after he makes a reassignment and delivers possession to a second assignee, his liability for rent thereafter to accrue ceases. This is on the principle that his liability during the time he holds the lease is founded on privity of estate, and, as soon as such privity of estate ceases, the liability ceases with it.

Larceny — cow — taking hide. Where the evidence shows that the defendants ran down and caught a living cow, the property of another, on her range in the woods, and killed her by cutting her throat, and stripped off her hide, and sold such hide to a dealer in the city, leaving her entire carcass in the woods, where she was killed, it is held in the Florida case of Flowers v. State, 68 So. 754, annotated in L.R.A. 1915E, 848, that this constituted larceny of such cow.

Mandamus — to compel meeting of directors. Mandamus, it is held in the Oklahoma case of Cummings v. Wallower, 149 Pac. 864, annotated in L.R.A. 1915E, 774, will lie to compel the president of a corporation to call a special meeting of the board of directors, there being a valid by-law requiring the issuance of the call, and where the necessary demand therefor has first been made.

Master and servant — assault by servant — exemplary damages. Contractual relations with the principal are held not necessary in Memphis Street R. Co. v. Stratton, 131 Tenn. 620, 176 S. W. 105, L.R.A.1915E, 704, to render him liable in exemplary damages for a wanton assault by his agent within the line of his duty, and therefore one whose automobile drops into an unguarded excavation made by a street railway company in a public street may recover such damages from the company for such an assault made upon him by one employed by the company to watch the excavation, because of the accident and the steps taken to extricate the machine.

Master and servant — heat prostration — assumption of risk. An unusual question was presented in Louisville & N. R. Co. v. Williams, 165 Ky. 386, 176 S. W. 1186, which holds that one employed to remove the cinders from a pit into which they are dumped from railroad engines assumes the risk of injury from heat prostration by working on a sultry night, if he is not required to do more than the customary amount of work, and he increases the hazard by imprudence in the use of ice water.

As appears by the note appended to the foregoing case in L.R.A.1915E, 613, the decision is in strict accord with the one other case which a careful search has disclosed as passing upon this question.

Master and servant — liability of agent for nonfeasance — failure of building agent to keep elevator in repair. Agents of an apartment building with full authority to keep it in repair and hire the employees are held personally liable in Tippecanoe Loan & T. Co. v. Jester, 180 Ind. 357, 101 N. E. 915, annotated in L.R.A.1915E, 721, for injury to a tenant through their negligence to keep the door of the elevator shaft in repair, so that it stands open when the elevator is not at the floor where the door is located, and the tenant, misled by the open door, steps into the shaft and falls to the bottom, since they are guilty of misfeasance in permitting the elevator to be operated in an unsafe condition.

Municipal corporation — assault by officer — liability. A city is held not liable in the Minnesota case of Lamont v. Stavanaugh, 152 N. W. 720, annotated in L.R.A.1915E, 460, for injuries received by a person on its streets in an assault by a police officer, although such officer is known to the officials appointing him to be a man of vicious propensities and violent temper.

Municipal corporation — power of council to contract beyond term. Retiring members of a municipal council, it is held in the Arizona case of Tempe v. Corbell, 147 Pac. 745, cannot, on grounds of public policy, pending the induction into office of their successors, who have been elected, make a binding contract by the year for the sprinkling of the streets, where a statute confers upon the council the exclusive control of the streets, although power is also given to appoint agents for the town from time to time.

Recent cases on power of board to appoint an officer or to make a contract for a term extending beyond its own term accompany the foregoing decision in L.R.A.1915E, 581, the earlier authorities having been presented in 29 L.R.A. (N.S.) 652.

Negligence — death of child — negligence of parent — effect on rights of other parent. That a mother cannot hold a railroad company liable for negligently killing her minor child where the negligence of the father proximately contributed to the accident, although the father was also killed in the same accident, is held in Darbrinsky v. Pennsylvania Co. 248 Pa. 503, 94 Atl. 269, L.R.A.1915E, 781.

Negligence — defect in structure — liability of contractor. Failure of a contractor employed to install a stationary washstand in a building, to support with a cleat nailed to a joist, the end of a board which he replaced in the floor, in front of the washstand, as was necessary to render it safe, is held in the Mexico case of Wood v. Sloan, 148 Pac. 507, accompanied by supplemental annotation in L.R.A.1915E, 766, not to render him liable to a tenant of the premises who was injured when the board gave way under him, where there is no evidence that the contractor knew of the defect and its dangerous character.

Pauper — medical treatment — liability of relatives. An unusual question was presented in Tryon v. Moyer, 130 Minn. 198, 153 N. W. 307, annotated in L.R.A.1915E, 844, which holds that in an action for the reasonable value of medical and hospital care, treatment, and services rendered to a dependent relative in an emergency case, where there is an urgent requirement for both physician's services and hospital care, imperative and admitting of no delay, it is held that plaintiffs may recover from a relative upon whom rests the statutory duty to support such dependent relative compensation for the reasonable value of such services, even though such services were rendered without the knowledge of the relative sought to be charged.

Public improvement — assessment — liability of homestead. The weight of authority is with the Oklahoma case of Patterson v. Wallace, 147 Pac. 1034, annotated in L.R.A.1915E, 662, which holds that a homestead is not exempt from assessment or lien for local improvements.

Railroad — compelling construction and maintenance of spurs — constitutionality. A railroad company, it is held in the Mississippi case of McInnis v. New Orleans & N. E. R. Co. P.U.R. 1915D, 418, 68 So. 481, cannot, in view of the constitutional provision against taking property without due process of law, be compelled to construct and maintain spurs or sidings to connect industrial plants with its right of way, even upon the sole conditions that they will not cause hazard to the property and trains of the company, and the cost of materials and right of way is imposed upon the applicant.

Recent cases on the power to compel a railroad to build, maintain, or connect with a side track for the accommodation of shippers, accompany the foregoing decision in L.R.A.1915E, 682, the earlier cases having been collated in 28 L.R.A. (N.S.) 1013.

Railroad — injury by operation — liability. Injury to neighboring property by the ordinary operation of a railroad without negligence, caused by jar and the casting thereon of smoke, soot, dust, and sparks, is held not within the operation of a constitutional provision of compensation for property damaged for public use, since it is *damnum absque injuria*, in the Washington case of Taylor v. Chicago, M. & St. P. R. Co. 148 Pac. 887, L.R.A.1915E, 634.

Railroad — requirement of subway. Where the situation is such that a railway company is under a legal obligation to restore a highway across its track to a reasonably safe condition for travel, and this result cannot be otherwise accomplished, it is held in State ex rel. Ise v. Atchison, T. & S. F. R. Co. 95 Kan. 22, 147 Pac. 801, that a court may require the construction of a subway, but only where the necessity is clearly shown and supported by competent expert evidence.

The cases on power to compel a railroad to establish or maintain at its own expense an overhead or underground highway crossing accompany the foregoing decision in L.R.A.1915E, 751.

Release — claim for personal injury — effect on claim for death. A release by a person injured by another's negligence, of all and every claim for damages which he may or could possibly have for or on account of his injuries, is held in State v. United R. & Electric Co. 121 Md. 457, 88 Atl. 229, accompanied by supplemental annotation in

L.R.A.1915E, 1163, to preclude an action for his death from such injuries, under a statute rendering one who would have been liable for damages for personal injuries if death had not ensued liable to an action for damages notwithstanding the death of the person injured.

Slander — by judge at trial. That no action lies for slanderous words spoken by a judge in the course of a judicial proceeding over which he is presiding, such words being absolutely privileged, is held in the Washington case of Houghton v. Humphries, 147 Pac. 641, which is accompanied in L.R.A.1915E, 1051, by a note in which the cases on libel and slander by judicial officer or juror are collated.

Slander — request to pay debt. A statement made to a person in the presence of others, "All I want you to do is to pay your honest debts," is held not slanderous in Hamilton v. McKenna, 95 Kan. 207, 147 Pac. 1126, accompanied by supplemental annotation in L.R.A. 1915E, 455, the earlier authorities having been presented in 3 L.R.A.(N.S.) 339.

State — department of agriculture — liability for injury to patron of fair. A state board of agriculture while holding a fair is held in Morrison v. MacLaren, 160 Wis. 621, 152 N. W. 475, annotated in L.R.A.1915E, 469, to be engaged in the discharge of a governmental function, and is not liable to patrons for injury by one employed to give an exhibition such as an aeroplane flight, to attract people to the grounds and entertain them while there.

Trade union — failure to notify contractors of wage scale — liability. A trade union having absolute control of the labor market in a particular locality is held liable in Powers v. Journeymen Bricklayers' Union, 130 Tenn. 643, 172 S. W. 284, L.R.A.1915E, 1006, to a contractor for the amount which he is compelled to pay for labor under the scale fixed by it, in case it fails to notify him of a reduction in the scale, so that he continues to pay the former rates. This seems to be a case of first impression.

Trust — conveyance to second wife — rights of children. However harsh or unjust or inequitable it may appear for a husband to make a gift to his second wife of his real estate, and thus deprive the children of his first marriage of all interest therein, even though he acquired the real estate from moneys derived from their mother's separate property, equity is held powerless in Clester v. Clester, 90 Kan. 638, 135 Pac. 996, to raise a trust by implication and enforce it, on the ground that it is necessary to prevent a failure of justice.

The cases on gratuitous conveyance as raising implied, resulting, or constructive trust in favor of the natural objects of the bounty of the grantor or donor are discussed in the note accompanying the foregoing decision in L.R.A.1915E, 648.

Trust — execution — termination of authority. A novel question was presented in the New Mexico case of Lovato v. Catron, 148 Pac. 490, L.R.A.1915E, 451, which holds that where beneficiaries, having an interest in a trust fund, are induced, by alleged fraudulent representations, to assign their respective interests in the fund, and the assignee presents the respective assignments to the trustee, who, without knowledge of the alleged fraud, pays to the assignee the full amount due the beneficiaries respectively, the trust is thereby fully executed, and the trustee has no further interest in the fund, and cannot maintain a suit in equity, for and on behalf of the beneficiaries, to cancel the assignments and compel the assignee to account to the beneficiaries for the true amount due.

It may be observed that the question was whether a trustee who has paid over the trust fund to an assignee of the *cestui que trust* upon an assignment good in law, but fraudulent in the inducement, may recover the fund, and it was held that he may not do so even though the assignee had mutilated the assignment in changing the consideration. The reason is that there is no fraud against the trustee. The opinion of the court

seems convincing of the correctness of its judgment. No other case of this kind has been found.

Water — pollution — turning heated water into stream. That the use by a riparian owner of such quantity of the water of the stream to cool his machinery that, when returned to the stream in its heated condition, it prevents the formation of ice which a lower owner takes from the river for commercial purposes, is unreasonable, and may be enjoined, is held in Sandusky Portland Cement Co. v. Dixon Pure Ice Co. 221 Fed 200, annotated in L.R.A.1915E, 1210.

Will — devise in trust during life of husband — effect of divorce. Under a devise in trust of a share in testator's estate for his daughter whose husband is dissipated, with directions to pay her the income until the death of her husband, and then put her in possession of the property, and in case she dies before her husband her interest to be divided among her children, it is held in the Iowa case of Re Cornils, 149 N. W. 65, annotated in L.R.A.1915E, 762, that she is entitled to possession of the property upon being divorced from her husband.

Recent Canadian Decisions.

[NOTE.—The more important of these decisions will be reported, with full annotations, in British Ruling Cases.]

Charities — bequest to school to be used in furtherance of athletic sports — validity. A bequest to a free grammar school for the purpose of constructing courts for certain games, or for some similar purpose to be decided upon by the house masters, and to furnish a prize for some event in the school athletic sports every year, is held in Re Mariette [1915] 2 Ch. 284, to be a valid charitable bequest, since it is essential that in such a school there shall be organized games as a part of the daily routine.

Damages — breach of contract to issue shares — failure to float company. The fact that by reason of failure to float a projected company it has never become a going concern does not, according to the decision of the Nova Scotia supreme court in Johnson v. Roche, 49 N. S. 12, limit the recovery for a breach of contract to issue shares in such company to nominal damages only, notwithstanding the difficulties in the way of assessing substantial damages; but the actual or intrinsic value of the shares may be estimated with reference to the assets of the company and the surrounding circumstances.

Highways — obstruction by trolley pole — liability of street car company. The case of Weir v. Hamilton Street R. Co. 32 Ont. L. Rep. 578, heretofore reported in these columns as holding that authority conferred by a municipal by-law upon a trolley company to place its poles along a part of a certain street on the devil's strip between the two tracks will not exonerate it from liability to persons who, while riding in an automobile at night, ran into one of the poles, which were unguarded and unlighted, on the ground that the authority given to erect poles did not authorize them so to be maintained as to create a trap,—has been since reversed by the Supreme Court of Canada, which holds that the street railway company was under no legal duty to put a danger signal upon the pole, any insufficient lighting of the street at that point being chargeable to the municipality. Hamilton Street R. Co. v. Weir, 51 Can. S. C. 506.

Insurance — blowing up building to check spread of fire — compensation to owner — subrogation of municipality to insurance. A municipal corporation, the officers of which have, in pursuance of authority vested in them by statute, caused a building to be blown up to check the progress of a conflagration, and which has settled a claim for damages done to adjacent property by the explosion, and taken from the owner an assignment of her rights as against the

insurer of the property, is not such a wrongdoer as not to be entitled to be subrogated to the rights of the insured. Guardian Assur. Co. v. Chicoutimi, 51 Can. S. C. 562.

Insurance — violation of instructions by agent — liability to insurance company. A fire insurance agent who has accepted a risk at a lower rate than that authorized is liable to his principal for damages resulting from a violation of his instructions, the measure of which is not merely the difference between the rate of premium at which the risk was authorized to be accepted and the rate at which it was actually accepted, but, in case of loss, it is the amount which the insurer has been compelled to pay. Globe & R. F. Ins. Co. v. Wetmore & Co. 49 N. S. 55.

Insurance — misrepresentation — question as to rejection of applicant by any other company. An applicant for life insurance by answering in the negative the question "Has any proposal to insure your life been declined, withdrawn or postponed? Give full particulars," when as a matter of fact she had orally asked an insurance agent for another company for insurance for an amount beyond $200, and the agent had replied that this company could not accept a proposal for insurance to that amount from an applicant who was a marks-woman,—is held in Donovan v. Excelsior L. Ins. Co. 43 N. B. 325, not thereby to have made a material misrepresentation. The same case holds that there was no material misrepresentation in failing to disclose, in reply to the question "Have you any other insurance?" the existence of an industrial policy for a small amount, in the vicinity of $50.

Vendor and purchaser — agreement to pay improvements and assessments "now due" — liability for deferred instalments. An agreement on the part of the vendor of city property to pay "the taxes, local improvements, and other assessments of whatsoever kind now due on the property" embraces sewer assessments not immediately payable, chargeable as a lien against the property, as to which the property owners were given the option of making payment in instalments—especially where the vendor has given a deed containing a covenant against encumbrances. Munroe v. McDonald, 49 N. S. 110.

Vendor and purchaser — rescission — misrepresentation — refusal of copurchaser to concur in asking for rescission. The rule that when several have been induced by fraud to become joint purchasers, rescission cannot be decreed unless all assent to it, does not apply where the purchaser refusing to join in asking for rescission induced the purchase by means of fraudulent representations while acting as the agent of the vendor. Kildonan Invest. Co. v. Thompson, 25 Manitoba L. Rep. 446.

Will — residuary bequest — implied revocation by codicil. Under the rule that a clear, unambiguous gift in a will can be revoked by codicil only by words at least equally clear and unambiguous as those of the original gift, a codicil disposing of "the residue of my estate not bequeathed by the above will" does not impliedly revoke a bequest of the residue, including any lapsed bequests, made by the will for certain charitable purposes, but its operation must be confined to such portion, if any, of the residue as may turn out not to have been actually disposed of by the will. Re Stoodley [1915] 2 Ch. 295.

QUAINT and CURIOUS

Amusement to an observing mind is study.—Bea.

Big Sim. A Salt Lake City man tells this story of one "Big Sim," a deputy sheriff of Eureka, from whom no criminal could get away by the cross-country method. Sim was familiar with every foot of ground in eastern Nevada, and could outrun a coyote.

As deputy sheriff he engaged in several long chases, always with success. His capture of a horse thief known as "Spanish Abe" was the toast of Eureka for a long time.

This Spanish Abe was a "bad actor," who made it his business to appropriate stray cattle and the blooded mares of the neighborhood. With a companion he was finally rounded up and incarcerated in the Eureka jail. The next night, however, the criminals forced the window of their cell and took to the brush, mounted on the fleetest animals they could steal. Big Sim, hours later, hit the trial in pursuit. Spanish Abe turned toward Utah, and was changing horses along the road. Big Sim, renewing his mount likewise, and cutting cross country, gained on the fugitives in the desert. Pursued and pursuer had been riding continuously, and the horses were giving away under the strain. But Big Sim kept on, and it is said he was well into Utah when he brought Spanish Abe and his companion upon a level with his gun and clapped on the handcuffs:

"You have no right to take us, Sim," the Mexican whined. "We are in Utah."

"Hell!" Big Sim replied. "I ain't no surveyor. Come on."

A Kanue Adrift. Fearing that his runaway son would carry out an often expressed desire to enlist in the United States Marine Corps, Morris Kanue, of Leopold, West Virginia, has written to the local recruiting office of the "sea soldiers" as follows:

"U. S. Marine Corps,
Pittsburgh, Pa.

I hereby warn you not to employ or hire my son, Anthony Kanue, as a submarine of the Navy. He has run away from home, and I think he has gone to Pittsburgh to enlist. He is only seventeen years old, in proof of which I am only thirty-nine myself. If he comes there, whale him within an inch of his life, and send him back to me.

His father,
Morris Kanue."

Sergeant Michael De Boo, in charge of the Pittsburgh recruiting office of the United States Marine Corps, has assured the anxious parent that the boy will not be enlisted should he apply, but that "whaling" him is out of the question, and the father should "paddle his own Kanue."

Up to Congress. Bernard T. Walters, of Nesquahoning, Pennsylvania, threatens to petition Congress for the enactment of legislation that will permit a man with only one eye to enlist in the United States Marine Corps.

Though he was rejected at the local recruiting office of the sea-soldiers because of a missing left optic, Walters insists that his remaining eye is strong and far-seeing enough to do the work of two.

"I wish I could think so," explained Sergeant Frank Stubbe, in charge of

the recruiting station, "but since something has run afoul of your port side running light, it would take you twice as long to see your duty as it would an ordinary marine."

"True, true," Walters agreed readily, "but on the other hand, I would be able to see only half of the enemy's forces, and would naturally be only half as scared as a recruit with two eyes."

But Stubbe could not be convinced, and now Walters wants Congress to take a hand in the matter.

No Cause for Mourning. Never having used the final "e" in her own spelling of the word "corpse," Mrs. Marceline Germain, of Donaldson, Michigan, was prostrated with grief upon receipt of an official communication announcing the fact that her brother, Joseph Eli Jollicouer, had joined the United States Marine Corps, and had named her as next of kin to be notified in case of death.

"If my brother is a corps, of what did he die?" she wrote to Captain H. T. Swain, in charge of the Portland, Oregon, recruiting station of the United States Marine Corps, who had enlisted the man and was responsible for the notification.

The recruiting officer, by return mail, bade the sorrowing sister cease mourning, and assured her that the "corps" to which her brother had lately attached himself was the "livest" kind of an organization.

Another Freak in Conveyancing. Humor sometimes finds its way into the peaceful and grave domain of title records. The following "Bill of Sale," for copy of which we are indebted to the Placerville office of the Pierce-Bosquit Abstract & Title Company, is quite as humorous and unusual as anything in that line we have yet published:

"Bill of Sale,

"El Dorado, California, Nov. 6th, 1905.

"This is to certify that I have this day Nov. 6th, 1905 bargained, sold and transferred to Leonard Sherman of El Dorado, all my right, title and interest in one certain band of ring streaked and speckled stock, known as 'Ben's band of Jacob's Cattle' 43 head in all.

"Some of them are of the masculine, and some of the feminine gender. Some are horned and some hornless. Some are branded or marked with a round hole punched through both ears, and some not marked in any way and of all ages, sizes and colors.

"He, said Leonard Sherman, to have, to hold, to keep and to keep right on keeping to the end of time if he is fool enough to do so, and the name of said band of stock is hereby changed from 'Ben's band of Jacob's Cattle' to 'Len's band of Ben's cattle' and he said Sherman adopts a 'Hole' as his brand.

"Witness our hands, this 6th day of November A. D. 1905.

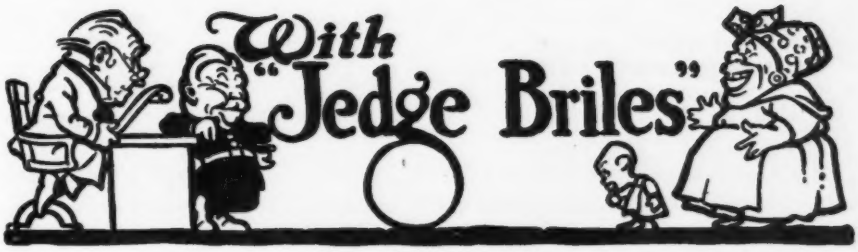
"Ben Honeychurch (seal)"

—Sacramento Daily Recorder.

Excitement at Ozark. Quite a furore has been raised among the negro cooks of Ozark, Alabama, by the recent passage of an ordinance making it a misdemeanor, punishable by fine, for any cook to carry from the home of her employer any pan or other receptacle containing food of any description unless she bears a written permission signed by her employer authorizing her to carry the articles found in her possession. No standing permits are allowed, but a new one must be issued each time the cook bears any article of food from the house of her employer.

Operating under this ordinance the police have arrested several cooks, and they have been fined by the mayor. Sentiment is divided among the employers, some expressing delight with the law, while others say that the ordinance is an undue interference with the private affairs of citizens.

Many cases have been appealed to the circuit court and will be heard in January. In the meantime, the cooks, one and all, are loud in denunciation of the curtailment of their time-honored privilege, and consternation reigns in the ranks of the bucks, who have long thrived upon the "crumbs" from the "white folks'" table. One of them has already served notice on his employer that he must have a raise in wages, calmly announcing that the new law necessitates his paying board.—Mobile Register.



BY W. LIVINGSTON LARNED

(Note.—Perhaps the most famous judge in the whole South presided in an Atlanta, Georgia, court where dozens of cases came up daily. He was lovingly known as "Jedge Briles" by his ever-changing audience, and while it was his stern mission and duty to administer punishment, as well as justice, erring ones were devoted to him just the same. Jedge Broyles' court is rich in stories, and it is from this picturesque source that a countless number of thoroughly authentic anecdotes have come. Judge Broyles is now a member of the court of appeals.)

His Christmas in a Jug. "The officer tells me he found you in an alley off Decatur street, asleep,—and under the influence of strong drink. This jug was at your side. Have you anything to say?"

Judge Broyles glanced over severely at the short, thick-set negro, and paused.

"Chrismus, Jedge," was the reply.

"But you had been drinking, Sam."

"Chrismus, Jedge."

"Yes—yes—I know—but that is no way to celebrate."

The negro grinned.

"Dat's er mattah ob chice, Jedge," he observed, "som' likes ter put funnies on trees, an' som' likes ter meddle roun' in hot mince pies, an' som' sort ob favors lovin' under de misseltoes, but me—Jedge—my idear ob Chrismus comes in de jug. Yo' caint blame me fer havin' a chice, kin yu?"

Jump One Way or the Other. The case had been dragging for nearly an hour, which was twice as long as it should have lasted in this court. A sunbrowned "cracker" from Decatur had been arrested on a trivial charge, but the two officers on the case could not agree as to whether the defendant had been caught drinking moonshine or not.

Suddenly the prisoner raised his hand, and motioned to Judge Broyles.

"What have you to say, Peter Cooper," the Judge inquired.

"I were just thinkin', it sho' would he'p matters, Jedge, ef yo' all would make up yo' mind one way er 'tother. Ef hits 'guilty,' then I wanter begin sarvin'; ef hits 'innercent,' I'd like to go out and finish that Christmas spree I done started."

Legal Light on a Dark Cloud. Bob Gibbs, a good-natured and industrious young negro, had brought about the arrest of his new wife. In the testimony it was shown that the girl had spent all she could lay her hands on for dress and self-ornamentation. Her home and husband had suffered in consequence. An altercation had taken place, and the wife had blacked her better-half's already dusky eye.

The judge ordered Matty Gibbs to stand up.

"Do you think more of your clothes than you do of your husband?" the court demanded sternly.

"Lawdy, jedge," Matty gasped, "I don' need no time ter think dat over. I done cotched him wid clothes, an' 'low dats how I gotter keep him. Nobuddy never woulda, but dat nigger ef he hadn't made some scan'lous re—marks 'bout green not goin' wid coal-color."

"Please, Yo' Honah! How Many Is Yo' Got?" Nicodemus Jefferson Lincoln was up before the court for disappearing on Christmas Day, and not re-

turning home for a full week. It was neglect and desertion, pure and simple, in the eyes of his three-hundred pound wife.

Her eyes burned as she glared angrily at Nicodemus. A policeman had found him New Year's Eve in a cheap dance hall.

"Jedge,—jedge," the woman snorted, "he done took an' lit out, knowin' dat his chilluns was 'spectin' him ter provide presents."

Judge "Briles" looked at Nicodemus.

"Don't you feel the paternal instinct?" he asked, "don't you like to take those little children on your knee once in a while?"

"Humph, jedge!" the darkey answered, "dey is fo'teen ob 'em, not countin' de babies, an' my knees gibs out erlong 'bout Christmus time."

Talking Back to the Court. "You can't talk back to the court," whispered the fat officer in the whiskery farmer's ear.

"Can't eh!—well, just watch me," was the explosive observation, "I went to school with his Honor,—beat him at that; licked him fer gettin' sassy to me; an' oncet run over him with my buggy. Whut's a little talk, now, more or less?"

His Excuse for Court Leniency. The good citizen had lapsed on the day before Christmas. A policeman had arrested him while he was in the midst of trying to push a cranberry around the block with his nose. Even now, as he stood before the court, his condition was the worse for red-eye, and a bedraggled package stuck from his overcoat pocket.

"Well, sir, the officer tells me you have been crying all night, and want to be allowed to go to your family on parole. Why should you assume you have a right to ask this?"

For answer, the prisoner pulled the package painfully from his pocket, undid the soiled paper, and put a bunch of sad, wilted celery on the stand.

"Shudge, yer Honor," was the plea, "ish nosh for ME I wanna get off,—ish my pore wife. She shent me out for this hschelery, and how can Chrismus dinner be served wishouch it, I ash you?"

"Only a Disguise, Your Honor." A suspect had been caught, with his coat and overcoat so stuffed with stolen goods that it was all he could do to walk. The officer had nabbed him as he was sneaking down a side street from the Christmas shopping centre, and he had looked like a young Zeppelin.

When the pilfered goods were lined up for exhibit they nearly covered the top of the judge's stand. It was an amazing exhibition.

"This seems to be a very serious case," said Judge Broyles, "These things were all stolen, were they not?"

"No, suh—no, suh," came the ready reply, "ef you wants ter know de truf, I wuz des playin' Santa Claus when dat officer got me. Dem things wuz de giffs."

"Let One Stand Forth and Speak!" It had been a profitable round-up, for Officer McMillan brought five awkward-age boys before "Jedge Briles." They were charged with stealing a Christmas pie from a window-ledge.

The bunch stood in embarrassed silence, as the judge looked them over.

"Well,—well,—what have you to say?" His Honor exclaimed.

There was much fidgeting from foot to foot and nudging of ribs. Then one red-headed young reprobate stood forward.

"We took it, sir," was the stammering statement.

"Were there any mitigating circumstances?" His Honor continued, rather anxious to be lenient so near the Yuletide season.

Red Head spoke up in a jiffy.

"Yes, sir! oh, Yes, sir!" he cried, "th' crust was all burnted!"

New Books & Periodicals

Book-keeping taught in one lesson,—don't lend them.—Punch.

"The Diplomatic Protection of Citizens Abroad, or The Law of International Claims." By Edwin M. Borchard, LL.B., Ph. D., pp. xxxvii, 988. (Banks Law Publishing Co., 1915, New York.) $8.

While the surface of the earth is apportioned among various powers whose several spheres of jurisdiction are delimited by boundary lines rarely indicating any natural division, economic interests tend more and more to bring all parts of the world together. Science, especially as applied to transportation, invites men to betake themselves to any quarter where they may profit, and in the pursuit of economic advantage political boundaries are more and more ignored. We in the United States have been prone to think of immigration and its problems as a peculiarly American question. While it may be admitted that no other country has received immigrants in such large numbers, yet no country is entirely exempt from such movements. If the streets of our great cities are largely the product of Italian labor, it is also true that the unskilled workers upon the Firth of Forth bridge in Scotland, upon the subways of Paris, and upon many of the highways of Germany likewise came from Italy. The migration of great bodies of population from one country to another in response to economic demands, and the more or less permanent residence in every country of multitudes who acknowledge no allegiance to the government under whose protection they dwell, and the investment of enormous amounts of capital in foreign jurisdictions, are normal phenomena in the life of to-day and are likely to continue. Hence the increasing complexity of the questions in international law produced by such interchanges of population and of property.

It is obvious that the presence of an alien in a country results in three sets of questions arising respectively out of the relations between the individual and the government of his allegiance, between the individual and the government under whose jurisdiction he dwells, and between the two governments concerned. In Mr. Borchard's elaborate treatise each of these relations and the questions arising therefrom are clearly and thoroughly discussed. In Part I. he treats the relation between the government and its citizen claiming its protection in a foreign land, and the circumstances under which it is usual for such protection to be accorded. He also discusses the rights of an alien while sojourning in foreign territory, the remedies which are open to him for a violation of his rights, and the responsibility which one government may fix upon another for such violation and denial of appropriate redress. Part II. is devoted particularly to the relation between the public claim of the state and the private claim of its injured citizen. In Part III. the nature of the person or interest protected is considered, while in Part IV. the qualifications or limitations upon the claim to diplomatic protection are discussed.

In this brief note it is impossible to discuss in detail the multitude of topics which the author considers. Suffice it to say that he has made a comprehensive and logical analysis of an intricate subject and has carried his plan into execution with learning and skill and a high degree of accuracy. The result is a book which should interest every student of international law and which is indispensable to practitioners having to do with the rights of aliens or with international claims. Special commendation should be given to the very full notes and bibliographies. Not only is the literature of the subject in the English language drawn upon, but the works of Continental writers are cited to an extent quite unusual in an English treatise, few of which afford such excellent guidance to the pertinent literature as does this. Three striking omissions may be noted,—Professor Wilson's Handbook of International Law in the Hornbook Series, the article on the same subject prepared by Justice Brewer and Charles Henry Butler for Cyc, and Butler's "The Treaty-making Power of the United States. In the mechanical arrangement of the notes, the present reviewer protests against the introduction into an English treatise of the Continental practice (followed also on the catalogue cards of many public libraries) of printing book titles entirely in small letters. Such an old

friend as Hall's, "A Treatise on the Foreign Powers and Jurisdiction of the British Crown" is but a ghost of its former self when it is printed, "A treatise on the foreign powers and jurisdiction of the British crown." The practice is often confusing and has nothing to commend it. However these are slight blemishes in a work whose merits are likely to make it a standard for a long time to come.

LAWRENCE B. EVANS,
of the Boston Bar.

"The Romance of Wills and Testaments." By Edgar Vine Hall (T. Fisher Unwin, Adelphi Terrace, London, W. C.). 5*s.* net.

This entertaining volume is well named. Throughout its pages there breathes the spirit of romance. It deals with those thoughts, emotions, and aspirations that possess the soul when it contemplates the inevitable end of man. It discloses meanness and avarice, love and faith, heroism and gratitude. No ghostly confessor ever learned greater secrets of the heart than are inscribed in the pages of this book.

Testators are often tyrants. They desire to impose their will upon those surviving them, and to sway later generations with the rule of the dead hand. From the security of the tomb, malice sends back a poisoned shaft. Solicitude and censoriousness mingle in bequests. Benefits are often lavished on the undeserving, and family feuds are carried to the grave.

The dread of the unknown often leads testators to devote to pious purposes the possessions for which they will have no further use, and to provide liberally for those who have served them. Humanitarians arrange for the care of animals and pets. Brave souls about to face the perils of the sea or the keen edge of battle provide for a succession to their wealth. Heirlooms are passed from hand to hand. Some take leave of the world with a fantastic bow and flourish; others are particular as to the details of their funerals, or by absence of ceremony carry their protest against existing institutions to the brink of the grave.

The author has rescued a large amount of original matter from the multitudinous manuscript volumes of wills which are preserved at Somerset House and elsewhere. This material is happily arranged and blended into an interesting narrative. We take pleasure in recommending this work to American readers.

"The Ethics of Confucius." Arranged according to the plan of Confucius, with running commentary by Miles Menander Dawson. (G. P. Putnam's Sons, New York.) $1.50 net.

The aim in preparing this book has been to put before Occidental readers, in the words of the Chinese sage and his followers, as translated, everything concerning ethics and statecraft contained in the Confucian classics, which is likely to interest such readers, omitting nothing of importance.

The passages quoted, arranged by topics, in accordance with a scheme laid down as that of Confucius himself in The Great Learning, are connected by a running narrative, showing briefly the relationship of one passage with the other, stating from what book taken and by whom enunciated, and most sparingly accompanied by quotations from other moralists, ancient and modern.

This volume is the first book of a series in preparation by the author under the auspices of the American Institute for Scientific Research, which will separate what the greatest masters of all time have taught concerning conduct from their teachings on other subjects, such as ceremonies, philosophy, theology, etc., and will present their precepts in their own words, but in a logical order and in a running narrative by the author. The next book in this series will be the "Ethics of Socrates."

Mr. Dawson is a member of the New York City Bar and of various learned societies, including the Confucian Society of China. He has presented in convenient and attractive form the ethical and political precepts of the great lawgiver of China.

"Constitutional Doctrines of Justice Harlan." By Floyd Barzilia Clark, Ph. D. (The Johns Hopkins Press, Baltimore, Md.) $1.

This a careful study of the constitutional doctrines of a great judge. During his extensive term of service—a period but slightly exceeded by any other justice—he wrote more than 700 decisions, besides more than 100 dissenting or concurring opinions.

In well-thought-out chapters the author has discussed the principles expounded by this great jurist concerning such subjects as "The Suability of States," "Impairment of the Obligation of Contracts," "Due Process of Law," "Interstate and Foreign Commerce," "Equal Protection of the Laws," "Jurisdiction of Courts," and "Judicial Legislation."

The work is a valuable study of the tendencies, interpretations, and opinions of one of the ablest members of the world's greatest court.

"Readings on the Relation of Government to Property and Industry." Edited by Samuel P. Orth, Professor of Political Science in Cornell University. (Ginn & Company, Boston.) $2.25.

This volume has been prepared primarily for college classes, but will be equally valuable for classes in business colleges and as a book of reference for men engaged in active business. It brings together some of the most significant of the recent discussions of the subject. Inasmuch as the question of the relation of government to business and property is principally one of constitutional and legal relations, the selections are largely of a legal nature, and many of them have been taken from a source hitherto almost entirely neglected by the lay student,—the law journals, repositories of much careful research and concise thinking on the subject.

Among the subjects under which the material is organized are the following: The changing conceptions of property obligations

and of governmental functions; the expanding police power, as sanctioned by state and Federal courts; the control of corporations; and the development of labor laws. The volume includes the text of the new amendments to the anti-trust law and of the new Federal Trade Commission act, and selections from the testimony taken before the Senate committee in the investigation which was a prelude to the framing of these laws.

The editor has shown painstaking care and discriminating taste in the selections which he has made for this volume.

"Taxation of Land Values." By Louis F. Post, Assistant Secretary of Labor. (Bobbs-Merrill Co., Indianapolis, 5th ed.) $1 net.

This book by one of the leading advocates of the single tax in America is a complete answer to the question, What is the single tax? It discusses clearly and forcibly the subjects of "Taxation Methods," "Land Value Taxation as a Tax Reform," and as an "Industrial Reform," and "The Distribution of Wealth."

It presents answers to typical questions which were put to the writer during his lecturing trips across the continent some years ago. "I think them fairly representative," states the author in the preface, "of the questions usually asked even to this day. If there are any new questions now, or any important variations of old ones, I am unaware of it. Whether my answers are conclusive or even satisfactory is for the reader to judge; but be their value what it may, answers are there to all the objections to the single tax that I have ever encountered."

The single tax is one of those questions that will not down, and no better summary of its principles in moderate compass is to be had than this time-tested work.

"Inventors and Money Makers." By F. W. Taussig, Ph. D., LL. B., Litt. D., Professor of Economics in Harvard University. (The Macmillan Co., New York.) $1.

The relation of human instincts to man's economic doings is the theme of this book. Professor Taussig approaches it both from the point of view of the ordinary workman and the employer. He discusses first the instinct of contrivance and the influence of the patent system. After taking up the psychology of money-making, he analyzes the instincts of collection, of domination, of emulation, and of devotion.

The author considers the imperious instinct of contrivance in inventors of genius, and notes how it is at present turned to advantageous exercise by the motives of material gain. He observes that the happiness of life, which is the final aim of industry, would be greatly promoted by an industrial organization in which employer and employed stand in such an attitude of co-operation and sympathy that all would commonly take satisfaction in the task of earning a living. He cherishes the hope that in the future the complexity of human motivation and the interplay of conflicting instincts may be made to work for human happiness more effectually than in the past.

There is much in this little volume to stimulate thought. It reaches out tentatively along the lines of that social sympathy which has become so great a power in the world.

"The Old Testament in the Light of To-Day." By William Frederic Badè. (Houghton, Mifflin Co., Boston.) $1.75.

The writer of this work presents a new and profoundly interesting interpretation of the development of the moral sense, as shown in the Old Testament. It is the author's belief that "refusal to recognize the obvious stages of moral progress by which Israel, under divine guidance, wrought out its high destiny, is not only to rob the Old Testament of its human interest and dramatic appeal, but to make it a serious stumbling block to those who need its passion for righteousness in their own lives."

What shall we do with the Old Testament? Must we throw it aside as outgrown and useless for the men and women of to-day, or is there in it something so vital, so valuable, that the world cannot afford to let it die? In this volume the author attempts to throw light upon this question. He says: "It has been my constant endeavor to meet, as untechnically as possible, the difficulties of men and women to whom the Old Testament is still a valuable part of the Bible, but who find it an undigestible element in the Biblical rationale of their beliefs. In my own case, as in that of others, who were brought up under the traditional view of the Scriptures, a frank evaluation of the morals of the Old Testament in the light of historical criticism has proved the only effective solvent."

Laymen and scholars alike will find this notable book most stimulating.

"Federal Reporter Digest." Vol. 10. Buckram, $7.50.

"Ross's Arizona Digest." 1 Vol. Buckram, $12.

"Law of Draymen, Freight Forwarders, and Warehousemen." By Gustave H. Bunge. 1 vol. Buckram, $5.

"Statham's Abridgment of the Law." By Margaret Center Klingelsmith. 2 vols. Buckram, $25.

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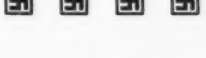

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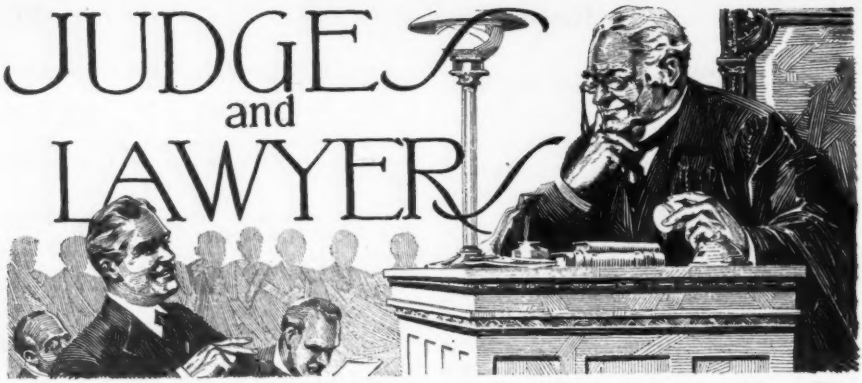

A Record of Bench and Bar

The Attorney General of the United States

HON. Thomas Watt Gregory was born November 6, 1861, at Crawfordsville, Lowndes county, Mississippi. His father was Dr. Francis Robert Gregory, who was born in Mecklensburg county, Virginia, and educated at Emory and Henry College, in southwestern Virginia. Dr. Gregory was a physician, who entered the Confederate Army as a captain, served in the 35th Mississippi, and died shortly after the battle of Corinth. His mother was Mary Cornelia Watt, of Columbia, South Carolina. Both families were of English, Scotch, and Irish blood. Thomas Watt Gregory, being left at a tender age as the only child of a widow, grew up in the family of his maternal grandfather, Major Thomas Watt, a planter of prominence in Oktibbeha county, Mississippi. At the close of the Civil War Major Watt sold his large plantation and moved to Starksville, Mississippi, subsequently purchased a plantation in what is now Clay county, and a few years later moved to West Point, Mississippi, where young Gregory grew to manhood. He attended the village school, participated in the village sports, learned to swim in the Tombigbee river, hunted and fished along the banks of its tributaries, and grew up living an outdoor life, of which he has always been extremely fond. At the age of fifteen he went to a boarding school at Culleoka, Maury county, Tennessee, and there prepared for college. In 1881 he entered the Southwestern Presbyterian University at Clarksville, Tennessee, finished the course in 1883, being the first student to complete the course

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in two years, winning the orator's medal and other honors. The following year he was a special student at the University of Virginia, where he won the Jefferson debater's medal. In the fall of 1884 he went west and located at Austin, Texas, graduating from the University of Texas Law Department in 1885, and beginning the practice of law in Austin, in the fall of that year. Until 1900 he practised alone, when he formed a partnership with R. L. Batts under the firm name of Gregory & Batts; and in 1908 Judge V. L. Brooks retired from the bench and entered the firm, at which time the firm name became Gregory, Batts, & Brooks. He was a regent of the University of Texas for eight years, and declined the appointment of Assistant Attorney General of Texas in 1892, and an appointment to the state bench in 1896. He was one of the trustees of the Austin Presbyterian Theological Seminary, and has taken an active interest in educational and church affairs. He was married to Miss Julia Nalle, of Austin, on February 22, 1893 and has four children, Jane Gregory, aged twenty-one, who graduated two years ago from the University of Texas; T. W. Gregory, Jr., now eighteen years old, a freshman in Princeton University; Nalle Gregory, sixteen years old, a student at Shenandoah Valley Academy, Winchester, Virginia; and Cornelia Gregory, aged eight.

Mr. Gregory has never been a candidate for any office, but has taken an active interest in almost all the political contests which have taken place in Texas during the last thirty years. He was a delegate to the National Democratic Convention in St. Louis, 1904, and represented his state on the Committee on Credentials. He was a delegate from the state at large to the Baltimore Convention, and was one of its vice presidents. He has always maintained that the duties of a private citizen are as onerous as those of the public servant, and that the duty of actively participating in the discussion of political questions and in attempting their solution cannot be properly avoided by any man. His life has been that of a lawyer, and he is known as such. The firm of Gregory & Batts was specially employed by the state of Texas to prosecute its great suit against the Waters-Pierce Oil Company, a part of the Standard Oil Trust, and recovered a judgment forfeiting the right of this corporation to do business in Texas, winding up its affairs through the instrumentality of a state receiver, selling out its entire plant, and rendering a judgment for penalties in favor of the state for a little less than $2,000,000. This judgment for penalties, believed to be the largest ever sustained in the United States, or perhaps elsewhere, was collected and the money paid into the treasury of the state after the case had been affirmed by the Supreme Court of the United States. By utilizing this fund the state tax for the following year was reduced to about 5 cents on a hundred dollars. The firm represented the state in various other suits brought to enforce the state anti-trust law, and is one of the best known in the entire southwest.

Mr. Gregory was a very ardent supporter of Woodrow Wilson, and actively supported him in the organization of his forces in the state of Texas and in the long drawn-out contest at Baltimore.

Shortly after the inauguration, Mr. Gregory was offered the position of special counsel to the government, and put in charge of New England transportation problems; and for about sixteen months devoted himself to the affairs of the New York, New Haven, & Hartford Railroad Company, resulting in a settlement of that controversy without the necessity of contesting litigation, and to the satisfaction of the Attorney General and the President.

Mr. Gregory was appointed Attorney General of the United States on August 29, 1914, and took the oath of office on September 3, 1914, the oath being administered at the Department of Justice by Chief Justice White of the Supreme Court.

Wilmington Law School has Youngest Dean

HARRY Edmund Rodgers was born at Dayton, Ohio, receiving his early education in the public schools of that city, and graduating B. S. from the Steele High School there. After taking a one-year preparatory course at Doane Academy, Granville, Ohio, and graduating with honors, he entered Denison University, from which he graduated B. S., winning the president's scholarship to the University of Cincinnati. Preferring, however, to study in the east, he decided to enter the law school of the University of Pennsylvania, of which he is LL.B. Not enjoying many early advantages in the way of fortune, he worked his way through each of these institutions entirely by his own endeavors. Notwithstanding this obstacle he found time to devote to athletics, particularly football, at each school which he attended, winning his "P" and making the All American Team as tackle at the U. of P. and also having the gold football bestowed upon him, the highest honor within the power of the Athletic Committee of the University.

HARRY E. RODGERS

Immediately following his graduation he received an invitation to become dean of the newly organized law school at Wilmington, North Carolina. He passed the state bar examination, and was admitted to practise in the courts of North Carolina in August of the same year, 1913. About this time he was married to Miss Lilian M. Baugh, of Philadelphia, daughter of the late Geo. W. Baugh, Esq., of the Philadelphia bar, and granddaughter of the late Dr. F. Knox Morton, one of the foremost physicians of that city, and twice city treasurer.

Besides his arduous work at the law school, where he teaches Equity Jurisprudence, Evidence, and Constitutional Law, Dean Rodgers has opened a law office and is engaged in practising law in the city of Wilmington.

Recipient of Vase on Anniversary.

James D. Maher, clerk of the Supreme Court of the United States, celebrated on December 1, the fiftieth anniversary of his service in that court. He was first appointed as a page. As a token of their esteem members of the bar practising before the Supreme Court presented to Mr. Maher a large vase, a reproduction of an ancient Greek vase, made of silver with a gold lining. The vase stands 24 inches high and cost more than $2,000. The vase has been sent to New York where it was made, to have the following inscription placed on it: "To James D. Maher, clerk of the Supreme Court of the United States, and for fifty years connected with the work of the court, in recognition of efficient public service performed with unfailing courtesy, from members of the Supreme Court bar, December 1, 1915."

The presentation of the vase to Mr. Maher was made by Frederick D. McKenney, son of a former clerk of the court. Mr. Maher was heartily congratulated by his many friends in Washington upon the anniversary of his long service.

Our Ambassador to Great Britain.

Walter H. Page has been since 1913 our Ambassador Extraordinary and Minister Plenipotentiary to Great Britain. He is a native of North Carolina, and was a student at Randolph-Macon College and at Johns Hopkins University. For several years he acted as the literary adviser of Houghton, Mifflin & Co. He

has been editor of the Forum, the Atlantic Monthly and the World's Work. He has written "The Rebuilding of Old Commonwealths."

Our Ambassador to Italy.

The American Ambassador Extraordinary and Plenipotentiary to Italy since 1913 has been the well-known and popular author, Thomas Nelson Page. He is a Virginian by birth, and an LL. B. of the University of Virginia. He practised law in Richmond for eighteen years. Washington and Lee University conferred on him the degree of Litt. D. and Tulane University, William and Mary College, and Washington and Lee University have bestowed the degree of LL. D.

His charming stories, breathing the spirit of the Old South and the New have have been widely read. Among them are "In Ole Virginia," "Red Rock," "Gordon Keith," "The Old South," "The Burial of the Guns," and "Pastime Stories."

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DR. THOMAS NELSON PAGE
Ambassador from the United States to Italy.

In 1906 he published a volume of poems under the title of "The Coast of Bohemia."

Mr. Page collected information relative to the sinking of the Ancona, which is at this writing, the subject of serious diplomatic controversy with Austria.

Photograph by Underwood & Underwood, N. Y.
WALTER H. PAGE
American Ambassador to Great Britain.

Death of International Lawyer.

Paul Fuller, international lawyer, and President Wilson's adviser in Mexican affairs, died suddenly on November 30. Heart failure was given as the cause.

After dining with Frederick R. Coudert and a party of friends, Mr. Fuller returned to his home. He was talking with his wife when he was stricken, and died instantly. Paul Fuller had a dread of publicity. No book of biographical reference contains a line about him. He was seldom seen in court. His work was done mainly in his library. He was born of New England parents, on a Cape Horn clipper, as she sailed into San Francisco

bay with a party seeking gold. This was sixty-seven years ago. He was hardly more than a baby when his parents died. His earlier years were spent among the Mexicans in California.

He landed in New York, it is said, when about ten years old, with little to aid him except a knowledge of Spanish, and perseverance. Charles Coudert, a French school teacher, took the lad in tow, tutored him, and without going to college or a law school Fuller passed the bar examinations. He became a member of Coudert Brothers, and then married Leonie Coudert and became brother-in-law to his partners.

Mr. Fuller was never a robust man and when he went to Mexico for President Wilson he was accompanied by a physician. He took only a grip and traveled through the heart of the warring country, conferring with the hostile leaders. The Mexicans were surprised to find a representative of the administration who could speak to them in their own language, and Mr. Fuller made a favorable impression.

Decease of Gen. F. M. Cockrell.

Francis Marion Cockrell, for five terms United States Senator from Missouri and once a member of the Interstate Commerce Commission, died in Washington, D. C. on December 13, at the age of eighty-one years.

Generall Cockrell was United States Senator from Missouri from 1875 until 1905. He entered the upper house of Congress as the successor of Carl Schurz. Missouri was submerged in the Roosevelt tidal wave in 1904, and when the deluge was over it was found that the state had a Republican legislature on its hands.

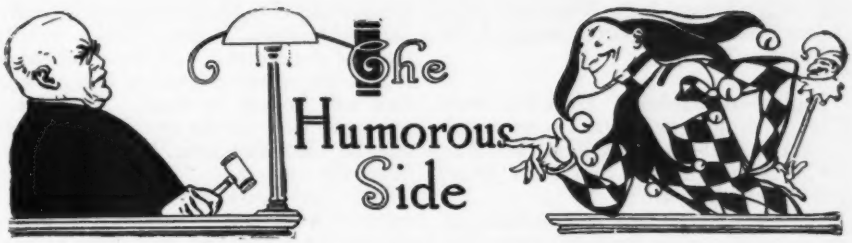
Many prominent men entered the contest for Senator. At the height of the struggle Elihu Root, then Secretary of State, suggested that Senator Cockrell, a staunch Democrat, be continued in office by the Republicans. They refused, whereupon President Roosevelt appointed General Cockrell a member of the Interstate Commerce Commission, saying this about him:

"I am truly sorry that my good friend Senator Cockrell retires from the Senate as a result of the Republican victory in Missouri."

General Cockrell, who won the military title in the Civil War, fighting for the Confederates, was a well-known figure in Washington for many years. During his incumbency as Senator he was known as the "watchdog of the Treasury," because of his views regarding the economical expenditure of public money.

The General was born in Johnson county, Mo., October 1, 1834. He became a lawyer, and was practising this profession when the Civil War began. He entered the Confederate army early, and, beginning as a captain in the Missouri State Guard rose to the rank of brigadier general. He was wounded in the battle of Franklin, and took part in the battles of Inka, Corinth, Hatchie, Fort Gibson, Big Black, and others. General Cockrell was in command of one of the forts at Vicksburg, during the siege, surrendering with the rest of Pemberton's army. He commanded the Confederate forces at the battle of Lone Jack, Missouri, which for the number of men engaged was one of the bloodiest conflicts of the war.

After the war he returned to the practise of law and in 1875 he was elected to the Senate.



Nobody so wise but has a little folly to spare.—Ger.

Diplomatic Evasion. When Richard Olney was Secretary of State he often said that appointees to the consular service should speak the language of the country to which they were appointed.

An enterprising western politician who desired to serve at a Chinese port presented his papers to Mr. Olney. The Secretary remarked: "Are you aware, sir, that I never recommend a consul unless he can speak the country's language? Now, I suppose you do not speak Chinese?" The westerner grinned broadly.

"If, Mr. Secretary," said he, "you will ask me a question in Chinese, I shall be happy to answer it." He got the job.

Facts and Diplomacy. "Diplomacy," remarked the observant person, "requires thorough study." "Yes," replied Senator Sorghum. "In order to be a good diplomat you've got to know all the facts in order to avoid saying anything which might lead to their discovery."—Washington Star.

He Knew. The landlady of a well-known boarding house always made a point of asking departing guests to write something in her visitors' book. She was very proud of it,—of some of the people whose names were in the volume, and the nice things they said.

"But there's one thing I can't understand," the lady confided to a friend, "and that is what an American gentleman put in the book after stopping here. People always smile when they read it."

"What was it?" queried the other.

"He only wrote the words, 'Quoth the raven!'"—Tit Bits.

Rural Diplomacy. "Judgin' from the price ye charged me, neighbor, ye put 3 gallon uv m'lasses in a 2-gallon jug. Naow I ain't b'grudgin' the money, but I don't cal-late ter hev the jug stretched."

Diplomacy. The shah once asked a group of his courtiers whom they thought the greater man, himself or his father. At first he could get no reply to so dangerous a question, the answer to which might cost the courtiers their heads. At last a wily old courtier said:

"Your father, sire; for although you are equal to your father in all other respects, in this he is superior to you,—that he had a greater son than any you have."

A Diplomat. "Splendid!" exclaimed the old colonel as Company C passed the saluting base.

"Did you hear wot old Nasty-face sez?" No. 3 of the front rank asked No. 4.

"Stand fast after parade, No. 4, for talking in the ranks!" snapped a sergeant from near by.

"It wasn't me talking!" muttered No. 4.

"You'd better not git two on us in trouble," advised No. 3 in a whisper.

"Talking while marching past!" echoed the adjutant. "What on earth did you find to talk about then?"

"As we was passing the salutin' base," explained No. 4, "the colonel sez, 'Splendid!' 'Yes,' I sez to meself, 'and you've got the smartest officer in the British army to thank for making us splendid, and that's our adjutant!'"

"Er—sergeant, send the man away.

and don't bring such frivolous complaints before me again!" snapped the adjutant.—Tit-Bits.

Diplomats Outdone. Here is a story about a diplomatic negro waiter; also about two well-known Kansas men, who can go by the names of Smith and Jones, just to tell the yarn:

Smith and Jones look much alike, and are frequently taken for each other. One day Smith was in a certain big hotel not a thousand miles from Kansas City and went into the dining room for dinner. The negro waiter busily brushed off the crumbs and said: "Why, how is you, Mr. Jones, how is you? I'se glad to see you. I hasn't seen you since I waited on your table when you all used to have a little game upstairs."

"I'm afraid you are mistaken," said Smith very quickly. "My name isn't Jones. You have the wrong man."

"Nuff said; nuff said," smiled the negro, with much bowing and scraping. "Ah knows all right when to keep mah mouf shet; ah knows all right, Mr. Jones."—Minn. Journal.

Wear and Tear. Jim enjoys the distinction of living near to the only saloon in a southern town. He also enjoys the distinction of being without an index finger to his right hand.

Came one day a stranger and asked of Jim the usual question,—where was the place of refreshment. Jim pointed to it.

"Who cut dat finger off foh yo?" asked the stranger. Jim looked him up and down.

"Dey ain' no one cut dat off," he said. "Ah's done wo' it off p'intin' out dat saloon to pussons jes sech as yo'self."—N. Y. Evening Post.

Tact. It being a holiday, the blundering man made calls with his wife. The first place they went the hostess said: "Julia is engaged."

"Is she, indeed?" said the man's wife radiantly. "Which one did she finally accept?"

The next place they were informed that Margaret was engaged, and again the man's wife beamed sympathetically and murmured: "Is she, indeed? Which one did she accept?" At the third place it was the news of Jessie's engagement that was broken to them. As before, the man's wife put the question: "Which one did she finally take?" On their way home the man said: "Why did you ask 'which one' every time a new engagement was sprung on us? Are those girls so attractive that men were falling over each other in the scramble to get them for their wives?" "Not at all," said his wife. "I don't suppose any of them ever had but one offer, and it's a wonder they got that. I shouldn't be surprised if the men back out even now before the wedding day. But you see, dear, I had to be diplomatic. Those people can do me many favors. The surest way to make myself solid with them is to pretend to think their girls so popular that every man in town was crazy to marry them."

"With my opportunities down town," groaned the man, "if I had your genius, we'd be millionaires inside of six months."

A Pertinent Question. A politician who was seeking the votes of a certain community in Ohio to the end that he might be sent to Congress thought it worth while to make mention of his humble origin and early struggles.

"I got my start in life by serving in a grocery at $3 a week, and yet I managed to save," he announced.

Whereupon a voice from the audience queried:

"Was that before the invention of cash registers?"—New York Times.

Alliances and Ententes. "Let us," proposed Diplomacy, "form an alliance with our neighbor."

It was so ordered. The alliance was formed and Diplomacy lowered its voice.

"Now," it whispered, "let us form an *entente* with our neighbor's enemy, so that we may go to war with either, or neither, or both, as the exigencies of domestic politics shall advise."—N. Y. Evening Post.